Rules of the City of New York

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

48 RCNY 3-103

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-103 Buildings Penalty Schedule.

BUILDINGS PENALTY SCHEDULE

Buildings Penalty Schedule I: Effective For Notices of Violation With a Date of Occurrence On or Before June 30, 2008:

The Penalty Schedule set forth below, Buildings Penalty Schedule I, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or before June 30, 2008.

Citations preceded by "ZR" refer to the NYC Zoning Resolution. All other citations, except where otherwise indicated, are to the NYC Administrative Code; also, citations preceded by "AC" are to the NYC Administrative Code.

A stipulation (stip.) is available at a hearing (at the first offense penalty) only if so indicated in this Penalty Schedule. A stip. provides a 75 day extension of time to comply with the Buildings Commissioner's Order to Correct, with the 75 days counted from the first scheduled hearing date. If the violation has been marked hazardous by the Issuing Officer on the Notice of Violation or the NOV is amended to indicate a hazardous violation, a stipulation will not be offered.

A second or subsequent offense is a violation by the same respondent of the same provision of law, rule or

regulation as the previous violation and, if the respondent is the owner, agent, lessee, or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within an 18 month period).

If the violation has been corrected by the first scheduled hearing date, a mitigated (MIT.) penalty will be imposed for violations that are eligible for mitigation as indicated in this Penalty Schedule, unless the violation has been marked hazardous by the Issuing Officer on the Notice of Violation or the NOV is amended to indicate a hazardous violation.

Section of Law	Violation Description	STIP.	Penalty	MIT. Pen.	Default-Penalty	2nd Offense Penalty	2nd Offense MIT.	2nd Offense Default Penalty
26-118	Failure to comply with a Stop Work Order-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
26-122	Failure to comply with order by the Department.	No	1,500	No	5,000	3,000	No	5,000
26-124 (b)	Filing a false certificate, form, affidavit or statement of correction with the N. Y. C. Department of Buildings.	No	2,500	No	2,500	6,250	No	10,000
26-125 (f)	Illegal conversion from 1 or 2 family house to 4 families or more (daily penalty per unit for a violation of 26-125)	No	1,000 (perday)	No	25,000	1,000 (perday)	No	45,000
26-126 .1(e)(i)	Additional daily penalty for continued violation of 27-118.1(a) (1st & 2nd Offenses) HAZARDOUS	No	50	No	4,500	75	No	4,500
26-126 .1(e)(ii)	Additional daily penalty for continued violation of 27-118.1(a) (3rd Offense) HAZARDOUS	No	N/A	N/A	N/A	3rd Off:100	No	3rd Off:4,500
26-126 .1(f)	Additional daily penalty for continued violation of 27-118.1(b)	No	350	No	15,750	N/A	N/A	N/A
26-126 .3(a)	Failure to comply with the commissioner's order to file a certificate of correction.	No	500	No	2,500	1,250	No	10,000
26-138 (a)	Falsely advertising as eligible to perform work requiring DOB license.	No	400	No	2,500	1,000	No	10,000
26-142	Performing work required to be performed by a licensed Master Plumber without having obtained Master Plumber's license.	No	400	No	2,500	1,250	No	10,000
26-166	Supervision or use of hoisting machine without a hoisting machine operator's license.	No	500	No	2,500	1,250	No	10,000
26-172	Supervision/use of rigging equipment without a master rigger's license-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-172	Supervision/use of rigging equipment without a special rigger's license-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-178	Failed to obtain or maintain a bond and/or insurance as required-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-179	Failed to obtain and/or maintain workers' comp. ins. as required by law-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
26-181 (a)	Use of rigging equipment without proper "DANGER" signs.	No	500	No	2,500	1,250	No	10,000
26-181 .1	Lic. Rigger failed to ensure Susp. Scaff. workers have valid Cert. ofFitness on site-HAZARDOUS	No	1,500	No	2,500	2,500	No	15,000
26-204 .1(a)	Erected, dismantled, repaired, maintained or modified supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to 26-204.3-HAZARDOUS	No	800	No	2,500	2,000	No	10,000

26-204 .1(b)	Knowingly permitted individual to erect, dismantle, repair, maintain or modify supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to 26-204.3-HAZARDOUS	No	1,200	No	2,500	2,500	No	10,000
26-204 .1(c)	Use of permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to 26-204.4	No	500	250	2,500	1,000	No	10,000
26-204 .1(d)	Knowingly allowed individual(s) to use permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to 26-204.4-HAZARDOUS	No	1,200	No	2,500	2,500	No	10,000
26-229	Failure to provide 8 foot high fence where required during excavation operations.	No	480	No	2,500	1,250	No	10,000
26-230	Failure to protect roofs, roof outlets or skylights or adjoining property.	No	500	No	2,500	1,250	No	10,000
26-230	Failure to protect roof, roof outlets or skylights of adjoining property during construction operations.	No	500	No	2,500	1,250	No	10,000
26-246	Operation of a Place of Assembly without a current permit.	Yes	200	100	2,500	500	250	10,000
26-246 (a) (2)	Failure to use safety belts while working on swinging scaffold.	No	500	No	2,500	1,250	No	10,000
26-252	No permit for sidewalk shed.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for footbridge.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for catch-platform.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for sidewalk shanty.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for sidewalk chute.	No	400	200	2,500	1,000	500	10,000
26-252	Failure to obtain a permit for temporary construction.	No	400	200	2,500	1,000	500	10,000
26-252	No permit for fence	Yes	400	200	2,500	1,000	No	10,000
26-252	No permit for railing	Yes	400	200	2,500	1,000	No	10,000
27-118 .1(a)	Residence altered or maintained for more than the legally approved number of families. (1st or 2nd Offense (Also subject to additional daily penalties for continued violations per section 26-126.1 (e)(i)) HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-118 .1(a)	Residence altered or maintained for occupancy as a dwelling for more than the legally approved number of families. (3rd Offense) (Also subject to additional daily penalties for continued violations per §26-126.2(e)(i)) HAZARDOUS	No	N/A	No	N/A	3rd Off:5 ,000	No	3rd Off:15, 000
27-118 .1(b)	Industrial/manufacturing altered or maintained for residential use-HAZARDOUS	No	3,000	No	5,000	8,000	No	25,000
27-127	Failure to maintain exterior building wall.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain building: interior.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain Boiler.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain Boiler-HAZARDOUS.	No	800	400	2,500	2,000	1,000	10,000
27-127	Failure to maintain exterior building wall HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-127	Failure to maintain building: interior HAZARDOUS.	No	800	No	2,500	2,000	No	10,000
27-127	Failure to maintain Place of Assembly.	Yes	350	180	2,500	880	440	10,000
27-127	Failure to Maintain Exterior Building Wall-NON-HAZARDOUS.	No	800	No	2,500	2,000	No	10,000

27-127	Failure to maintain plumbing and/or appurtenances-NON-HAZARDOUS	Yes	350	180	2,500	880	440	10,000
27-127	Failure to maintain plumbing and/or appurtenances-HAZARDOUS.	No	800	No	2,500	2,000	No	10,000
27-127	Failure to Maintain Exterior Building-HAZARDOUS	No	800	400	2,500	2,000	No	10,000
27-129	Failure to submit a 5th round Technical Report: Periodic Inspection of Exterior Wall and appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 2nd or 3rd round Technical Report: Periodic Inspection of Exterior Wall and appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 4th round Technical Report: Periodic inspection of Exterior Wall and Appurtenances as required by 1 RCNY 32-03.	No	700	350	2,500	1,750	No	10,000
27-129	Failure to submit a 6th round Technical Report: Periodic Inspection of Exterior wall and appurtenances as required by 1 RCNY 32-03	No	700	350	2,500	1,750	No	10,000
27-129 (d)(1)(b),(c)	Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions described in initial report.	No	700	350	2,500	1,750	No	10,000
27-132	Failure to file 10E/TRI upon completion of controlled work.	No	350	180	2,500	880	No	10,000
27-132	Failure to file 10F/TRI prior to start of controlled work.	No	350	180	2,500	880	No	10,000
27-146	Site Safety. Approved plans not available for inspection.	Yes	500	250	2,500	1,250	630	10,000
27-146	Failure to provide approved plans at premises at time of inspection.	Yes	250	130	2,500	630	320	10,000
27-146	Approved Plans not available at premises at time of inspection- plumbing	Yes	250	130	2,500	630	320	10,000
27-147	Work without a permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit: Expired permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit - elevator	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for elevator in readiness.	Yes	1,000	500	2,500	2,500	1,250	10,000
27-147	No permit for material hoist.	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for personnel hoist.	Yes	500	250	2,500	1,250	630	10,000
27-147	No permit for new building.	Yes	500	250	2,500	1,250	630	10,000
27-147	Plumbing work without a permit-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-147	Work without a permit-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-147	Plumbing without a permit NON-HAZARDOUS	Yes	500	250	2,500	1,250	No	10,000
27-147	Work without a permit NON-HAZARDOUS	Yes	500	250	2,500	1,250	No	10,000
27-147	Boiler installed, altered, repaired or used without a permit.	Yes	500	250	2,500	1,250	630	10,000
27-147	Work without a permit: Facilities for people with physical disabilities.	No	500	250	2,500	1,250	630	10,000
27-147	Demolition Work Without Required Demolition Permit-HAZARDOUS	No	2,000	1,000	2,500	5,000	No	10,000
27-147	Construction or alteration work without a permit in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000

27-147	Construction or alteration work without a permit in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-147	Plumbing work without a permit in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-147	Plumbing work without a permit in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-185	Operation of a elevator without an equipment use permit.	Yes	300	150	2,500	750	380	10,000
27-194	Failure to post permit for work at premises.	Yes	250	130	2,500	625	320	10,000
27-195	Failure to notify the DOB prior to the commencement of demolition work-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
1 RCNY 52-01(a)	Failure to notify the Department prior to the commencement of earthwork-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
1 RCNY 52-01(b)	Failure to notify the Department prior to the cancellation of earthwork-HAZARDOUS	No	1,000	No	2,500	2,500	No	10,000
27-201	Work contrary to approved Department of Buildings plans and application. Site safety hazardous.	No	500	No	2,500	1,250	No	10,000
27-201	Work does not conform to approved plans.	Yes	250	130	2,500	630	320	10,000
27-201	Place of Assembly contrary to approved plans.	Yes	250	130	2,500	630	320	10, 000
27-201	Work does not conform to approved plans-plumbing.	Yes	250	130	2,500	630	320	10,000
27-201	Work does not conform to approved plans-HAZARDOUS	No	500	No	2,500	1,250	No	10,000
27-201	Work contrary to approved Department of Buildings plans and application. Site Safety Non-hazardous	Yes	500	250	2,500	1,250	No	10,000
27-201	Work does not conform to approved plans.	Yes	500	250	2,500	1,250	No	10,000
27-201	Work contrary to approved application: Facilities for people with disabilities.	No	500	250	2,500	1,250	630	10,000
27-201	Plumbing work contrary to approved applications and plans in manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-201	Plumbing work contrary to approved applications and plans in manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-201	Construction work contrary to approved applications and plans in a manufacturing district for residential use-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-201	Construction work contrary to approved applications and plans in a manufacturing district for residential use.	No	1,500	750	2,000	2,000	1,000	10,000
27-203	Failure to comply with safety requirements during buildings operations	No	1,500	No	2,500	3,750	No	10,000
27-205	Failure to grant entry to premises to inspect work-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-214	New building occupied without a valid temporary or final certificate of occupancy.	Yes	700	350	2,500	1,750	No	10,000
27-214	New building occupied in manufacturing district without a valid certificate of occupancy.	No	1,500	750	2,000	2,000	1,000	10,000

27-215	Altered building occupied without a valid Certificate of Occupancy.	Yes	350	180	2,500	880	440	10,000
27-215	Operation of a Place of Assembly contrary to the C of O when the current C of O allows for the operation of a P.A.	Yes	350	180	2,500	880	440	10,000
27-215	Operation of a Place of Assembly contrary to the C of O when the current C of O does not allow the operation of a P.A.	Yes	350	180	2,500	880	440	10,000
27-215	Building in a manufacturing districtaltered for residential use occupiedwithout a valid certificate of occupancy.	No	1,500	750	2,000	2,000	1,000	10,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records-HAZARDOUS	No	800	No	1,000	2,000	No	5,000
27-217	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records. NON-HAZARDOUS	Yes	800	400	1,000	2,000	No	5,000
27-217	Dwelling illegally converted from family to 2 or 3 families.	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy contrary to that allowed by Certificate of Occupancy number-HAZARDOUS	No	800	No	1,000	2,000	No	5,000
27-217	Occupancy contrary to that allowed by Certificate of Occupancy number-NON-HAZARDOUS	Yes	800	400	1,000	2,000	1,000	5,000
27-217	Occupancy in a manufacturing district inconsistent with that allowed by the certificate of occupancy or Buildings Department records-HAZARDOUS.	No	2,000	No	2,500	2,500	No	10,000
27-217	Occupancy in manufacturing district inconsistent with that allowed by the certificate of occupancy or Buildings Department records.	No	1,500	750	2,000	2,000	1,000	10,000
27-225	Failure to post sign with occupant loads	Yes	250	130	500	630	320	5,000
27-228 .5	Failure to file a "Report of Compliance with Local Law 16/84" certifying to the installation of required fire protection systems.	No	400	200	2,500	1,000	500	10,000
27-228 .5	Failure to file an architect/engineer report certifying exit/directional signs connection to emergency power source/battery storage equipment	No	700	350	2,500	1,750	No	10,000
27-292 .10	People with Physical Disabilities: Public spaces/rooms not accessible/usable.	No	500	250	2,500	1,250	630	10,000
27-292 .11	Failure to provide/inadequate accessible wheelchair viewing positions.	No	500	250	2,500	1,250	630	10,000
27-292 .12	People with Physical Disabilities: Inadequate accessible public toilet rooms.	No	500	250	2,500	1,250	630	10,000
27-292 .13	People with Physical Disabilities: Inadequate accessible drinking fountains.	No	500	250	2,500	1,250	630	10,000
27-292 .14	People with Physical Disabitlities: inadequate accessible public telephones.	No	500	250	2,500	1,250	630	10,000
27-292 .15	People with Physical Disabilities: Inadequate emergency warning systems.	No	500	250	2,500	1,250	630	10,000

27-292 .16	People with Physical Disabilities: Operating mechanisms inaccessible.	No	500	250	2,500	1,250	630	10,000
27-292 .17	People with Physical Disabilities: Inadequate tactile warning systems.	No	500	250	2,500	1,250	630	10,000
27-292 .18	People with Physical Disabilities: Inadequate signage.	No	500	250	2,500	1,250	630	10,000
27-292 .19	People with Physical Disabilities: Insufficient usable parking spaces.	No	500	250	2,500	1,250	630	10,000
27-292 .20	People with Physical Disabilities: Inadequate passenger loading zones.	No	500	250	2,500	1,250	630	10,000
27-292 .5	People with Physical Disabilities: Failure to provide/ inadequate access.	No	500	250	2,500	1,250	630	10,000
27-292 .8	People with Physical Disabilities: Inadequate adaptable dwelling units.	No	500	250	2,500	1,250	630	10,000
27-292 .9	People with Physical Disabilities: Inadequate usable adaptable dwelling units.	No	500	250	2,500	1,250	630	10,000
27-345	Failure to provide/maintain fire stopping where required.	Yes	350	180	2,500	880	440	10,000
27-353 .01(a)	Failure to provide/inadequate elevator vestibules.	Yes	400	200	2,500	1,000	500	10,000
27-353 .01(b)	Failure to provide/inadequate fire protection for escalators.	Yes	400	200	2,500	1,000	500	10,000
27-361	Exit door: Total obstruction.	No	480	No	2,500	1,200	No	10,000
27-365	Failure to provide at least two means of egress from room or space as required.	No	480	No	2,500	1,200	No	10,000
27-366	Failure to provide required means of egress for every floor.	No	480	No	2,500	1,200	No	10,000
27-369	Exit passageway or corridor: Total Obstruction.	No	480	No	2,500	1,200	No	10,000
27-369	Exit passage or corridor: Required width decreased by Obstruction.	No	350	180	2,500	880	440	10,000
27-371	Exist door: required width decreased by Obstruction.	No	350	180	2,500	880	440	10,000
27-371	Exit door not self-closing.	No	350	180	2,500	880	440	10,000
27-371	Exit door swings against the flow of egress.	No	350	180	2,500	880	440	10,000
27-371	Use of prohibited door.	No	350	180	2,500	880	440	10,000
27-371	Use of prohibited door in place of Assembly.	No	350	180	2,500	880	440	10,000
27-371	Place of Assembly exit door of insufficient size.	No	350	180	2,500	880	440	10,000
27-371 (a)	Place of Assembly exit door not self-closing.	No	250	130	2,500	630	320	10,000
27--37 1(g)	Place of Assembly exit door swings against the flow of egress.	No	250	130	2,500	630	320	10,000
27-371 (j)	Use of illegal hardware.	No	350	180	2,500	880	440	10,000
27-371 (j)	Use of illegal hardware in Place of Assembly.	No	350	180	2,500	880	440	10,000
27-371 (k)	Failure to panic hardware where required by law.	Yes	350	180	2,500	880	440	10,000
27-371 (k)	Panic hardware inoperative.	Yes	350	180	2,500	880	440	10,000
27-371 (k)	Failure to provide panic hardware in place of Assembly.	Yes	350	180	2,500	880	440	10,000

27-371 (k)	Panic hardware in Place of Assembly inoperative.	Yes	350	180	2,500	880	440	10,000
27-381	Exit lighting defective/fails to meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381	Place of Assembly exit lighting does not meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381	Exit lighting defective/fails to meet Building Code standards.	No	350	180	2,500	880	440	10,000
27-381 (e)	Emergency lighting in vertical exits fails to meet B.E.C. standards.	Yes	400	200	2,500	1,000	500	10,000
27-382	Failure to provide/inadequate emergency power exit lights.	Yes	400	200	2,500	1,000	500	10,000
27-383	Exit sign defective/fails to meet Building Code standards.	Yes	250	130	2,500	630	320	10,000
27-383	Directional sign defective/fails to meet Building Code standards	Yes	250	130	2,500	630	320	10,000
27-383 (b)(3)	Failure to file affidavits and/or comply with other requirements set forth in RS 6-1 for photoluminescent exit path markings	No	700	350	2,500	1,750	No	10,000
27-383 (b)(3)	Failure to comply with requirements set forth in RS 6-1 for photoluminescent exit path markings-HAZARDOUS	No	1,500	No	2,500	3,750	No	10,000
27-383 (b)	Failure to install photoluminescent exit path markings-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-383 .1	Failure to comply with additional exit/directional sign requirement(s)	No	1,000	500	2,500	2,500	No	10,000
27-384	Failure to provide/inadequate emergency power exit/ directional signs.	Yes	400	200	2,500	1,000	500	10,000
27-384 (c)	Failure to provide proper emergency power or storage battery connections to exit/directional signs-HAZARDOUS	No	2,000	No	2,500	5,000	No	10,000
27-391	Signs at elevator landings missing and/or defective.	Yes	400	200	2,500	1,000	500	10,000
27-391	Signs at elevator landings missing and/or defective.	Yes	400	200	2,500	1,000	500	5,000
27-392	Floor numbering signs missing and/or defective	Yes	400	200	2,500	1,000	500	10,000
27-393	Stair and/or elevator identification signs missing and/ or defective.	Yes	400	200	2,500	1,000	500	10,000
27-394	Stair re-entry signs missing and/or defective.	Yes	400	200	2,500	1,000	500	10,000
27-395	Required signs not made of metal or other durable material.	Yes	400	200	2,500	1,000	500	10,000
27-396 .02	Failure to provide/inadequate sleeping room signs.	Yes	400	200	2,500	1,000	500	10,000
27-419	No fireproof enclosure for boiler.	No	480	No	2,500	1,200	No	10,000
27-509	Fence exceeds permitted height.	Yes	300	150	2,500	750	380	10,000
27-525 .1	Operation of a Place of Assembly without a current P. A. permit	Yes	500	250	2,500	1,250	630	10,000
27-527	Failure to post approved capacity sign.	No	80	40	2,500	200	100	10,000
27-528	Approved Place of Assembly plans not available for inspection	No	200	No	2,500	500	No	10,000
27-530	Failure to provide at least two means of egress.	No	400	No	2,500	1,000	No	10,000
27-530	Required means of egress obstructed in a place of as-	No	400	No	2,500	1,000	No	10,000

	sembly.							
27-541	Place of Assembly exit sign does not meet Building Code standards.	No	130	70	2,500	330	170	10,000
27-541	Place of Assembly direction sign does not meet Building Code standards.	No	130	70	2,500	330	170	10,000
27-542	No emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-542	Emergency lighting is inoperative or defective.	Yes	350	180	2,500	880	440	10,000
27-542	Emergency lighting is inadequate.	Yes	350	180	2,500	880	440	10,000
27-542	Failure to obtain a Certificate of Electrical Inspection for emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-542	Failure to amend plans to show location of emergency lighting.	Yes	350	180	2,500	880	440	10,000
27-546	No certificate for fireproof drapes and/or curtains.	Yes	100	50	2,500	250	130	10,000
27-777 .02	Failure to provide/inadequate smoke control.	Yes	400	200	2,500	1,000	500	10,000
27-782	Failure to clean range grease filters.	No	150	80	2,500	380	190	10,000
27-782	Failure to maintain record of duct and filter cleaning.	No	150	80	2,500	380	190	10,000
27-792	Heating combustion or cooking equipment installed with inadequate clearances from combustible construction.	No	700	350	2,500	1,750	880	10,000
27-793 (c)	Failure to file annual boiler report with this Department.	Yes	250	130	2,500	630	320	10,000
27-796	Fuel oil burning equipment installed by other than a licensed installer.	Yes	700	350	2,500	1,750	880	10,000
27-807	Inadequate air supply in boiler room.	No	700	350	2,500	1,750	880	10,000
27-814	Suspended unit heater not adequately supported.	No	700	350	2,500	1,750	880	10,000
27-829	Fuel oil tank improperly located.	No	700	350	2,500	1,750	880	10,000
27-830	Piping and/or equipment installed improperly.	No	700	350	2,500	1,750	880	10,000
27-832	Oil fired equipment not connected to chimney.	No	700	350	2,500	1,750	880	10,000
27-887	Gas vent reduced or undersized.	No	400	200	2,500	1,000	500	10,000
27-888	Gas vent installed at illegal height or location.	No	400	200	2,500	1,000	500	10,000
27-892	Gas vent connector backpitched.	No	400	200	2,500	1,000	500	10,000
27-901 (l)	Insufficient plumbing fixtures as required by RS-16.	No	400	200	2,500	1,000	500	10,000
27-901 (a)	No potable water in habitable building	No	400	200	2,500	1,000	500	10,000
27-901 (b)	Insufficient potable water in a habitable builiding.	No	400	200	2,500	1,000	500	10,000
27-901 (c)(2)	Building water service and/or house sewer not connected to available public water main or sewer.	No	400	200	2,500	1,000	500	10,000
27-901 (o)	Plumbing fixture not properly trapped and/or vented.	No	400	200	2,500	1,000	500	10,000
27-901 (z)(1)	Piping installed in elevator/counterweight hoistway.	No	400	200	2,500	1,000	500	10,000
27-902	Use or installation of plumbing materials or equipment which do not comply with RS-16.	No	400	200	2,500	1,000	500	10,000
27-904	Gas being supplied to building without inspection and certification by this department.	No	400	200	2,500	1,000	500	10,000
27-908 (a)	Potable water piping cross connected to non-potable water piping.	No	400	200	2,500	1,000	500	10,000

27-908 (c)	Water supply system not in accordance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-911	Drainage system not in accordance with RS-16	No	400	200	2,500	1,000	500	10,000
27-912	Hospital/institutional plumbing not in accordance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-913	Swimming pool plumbing not in compliance with RS-16.	No	400	200	2,500	1,000	500	10,000
27-921 (a)	Failure to have new or altered plumbing system tested.	No	400	200	2,500	1,000	500	10,000
27-921 (c)	Failure to uncover plumbing system for inspection and/or test.	No	400	200	2,500	1,000	500	10,000
27-929 (b)	Failure to provide/inadequate fire command and communication system.	No	400	No	2,500	1,000	No	10,000
27-930 (a)(1)	Insufficient reserve of water in gravity of pressure tank for standpipe system.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(2)	Insufficient height of gravity tank above highest hose outlet.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(4)	Siamese connection(s) not painted in approved color and/or labeled.	No	400	200	2,500	1,000	500	10,000
27-930 (a)(8)	Failure to provide drip valves between siamese connection and check value.	No	400	200	2,500	1,000	500	10,000
27-932 (a)	Required standpipe system not installed.	Yes	400	200	2,500	1,000	500	10,000
27-933	Failure to install required yard hydrant system.	Yes	400	200	2,500	1,000	500	10,000
27-934	Standpipe system in building under construction or demolition not installed or not in accordance with this section.	No	400	200	2,500	1,000	500	10,000
27-935	Insufficient number of Standpipe risers.	No	400	200	2,500	1,000	500	10,000
27-936	Standpipe risers improperly located.	No	400	200	2,500	1,000	500	10,000
27-938	Installation of undersized standpipe risers.	No	400	200	2,500	1,000	500	10,000
27-940	Insufficient number of siamese connections.	No	400	200	2,500	1,000	500	10,000
27-941	Cross-connection undersized/improperly installed.	No	400	200	2,500	1,000	500	10,000
27-942 (a)(1)	Hose outlet valve(s) not provided/do(es) not meet building code standards.	No	400	200	2,500	1,000	500	10,000
27-942 (a)(2)	Roof manifold not provided/does not meet building code standards.	No	400	200	2,500	1,000	500	10,000
27-942 (b)	Hose station not properly located.	No	400	200	2,500	1,000	500	10,000
27-942 (c)	Hose provided is not of proper type, size and/or quality.	No	400	200	2,500	1,000	500	10,000
27-942 (d)	Illegal auxiliary hose station(s).	No	400	200	2,500	1,000	500	10,000
27-944	Required pressure-reducing valves not installed.	No	400	200	2,500	1,000	500	10,000
27-945	Insufficient water supply to standpipe.	No	400	200	2,500	1,000	500	10,000
27-946	Required fire pump not installed.	Yes	400	200	2,500	1,000	500	10,000
27-947 (a)	Failure to install required control valve.	No	400	200	2,500	1,000	500	10,000
27-947 (b)	Failure to have required water supply to fire pump(s).	No	400	200	2,500	1,000	500	10,000
27-949	Failure to properly protect standpipe system from	No	400	200	2,500	1,000	500	10,000

	freezing.							
27-951	Standpipe system not properly tested.	No	400	200	2,500	1,000	500	10,000
27-954	Failure to provide a system of automatic sprinklers where required.	No	400	200	2,500	1,000	500	10,000
27-956 (c)	Sprinkler installation not in accordance with RS 17-2.	No	400	200	2,500	1,000	500	10,000
27-957	No sprinkler alarm in accordance with RS-17.	Yes	400	200	2,500	1,000	500	10,000
27-959	Failure to provide required siamese connection(s).	No	400	200	2,500	1,000	500	10,000
27-962	Insufficient sources of water supply for sprinkler system.	No	400	200	2,500	1,000	500	10,000
27-964	Failure to provide sprinkler booster pump where required.	No	400	200	2,500	1,000	500	10,000
27-966	Sprinkler system not properly protected from freezing.	No	400	200	2,500	1,000	500	10,000
27-967	Sprinkler system not properly tested.	No	400	200	2,500	1,000	500	10,000
27-968	No fire alarm system.	Yes	400	200	2,500	1,000	500	10,000
27-969	No approval certificate for fire alarm system.	Yes	130	70	2,500	330	170	10,000
27-972 (h)	Failure to install an acceptable two-way voice communication system with central station connection.	No	400	No	2,500	1,000	No	10,000
27-981 .2	Failure to provide and install an approved operational carbon monoxide detecting device	No	800	400	2,500	1,500	No	10,000
27-987	Failure to maintain elevator.	Yes	350	180	2,500	1,000	500	10,000
27-987	Failure to maintain elevator-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-996 .1	Failure to remove locks on elevator and hoistway doors.	Yes	400	200	2,500	1,000	500	10,000
27-996 .2	Failure to provide/inadequate firemen's service operation in elevator(s).	Yes	400	200	2,500	1,000	500	10,000
27-100 0	Failure to file a report of private elevator inspection with this department.	No	400	200	2,500	1,000	500	10,000
27-100 6	Failure to promptly report an elevator accident.	No	460	No	2,500	1,150	No	10,000
27-100 9	Operation of crane, derrick, or hoisting equipment in an unsafe manner.	No	4,000	No	5,000	10,000	No	10,000
27-100 9(a)	Failure to close sidewalk before lifting over the sidewalk.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(a)	No toe boards							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	No guard rails							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	Failure to provide handrails on stairwell							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100	Openings/holes not covered							

9(a)								
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors		1250	No	5000	3130	No	10,000
	7 or more floors		2500	No	5000	6250	No	10,000
27-100 9(a)	Failure to safeguard public and property effected by demolition operations.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(a)	No toe boards	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	No guard rails	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	Failure to safeguard public and property affected by construction operations.	No	1,000	No	5,000	2,500	No	10,000
27-100 9(a)	Failure to safeguard public and property affected by demolition operations.	No	1,500	No	5,000	3,750	No	10,000
27-100 9(c)	Failure to post contractor's sign	No	500	250	5,000	1,250	630	10,000
27-100 9(d)	No site safety log as per regulations	No	1,000	No	5,000	2,500	No	10,000
27-100 9(d)	Failure to comply with site safety program/plan per Buildings Dept. Rule	No	1,000	No	5,000	2,500	No	10,000
27-100 9(d)	Failure to have site safety manager present as required	No	2,000	No	5,000	5,000	No	10,000
27-101 4(a)	No elevator in readiness.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	No standpipe system.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	Siamese connection detective does not meet Building Code standards.	No	1,000	No	5,000	2,500	No	10,000
27-101 4(b)	No standpipe system.	No	1,000	No	5,000	2,500	No	10,000
27-101 8	Failure to perform adequate housekeeping							
	1-2 floors	No	350	No	5000	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1,760	No	5000	4,400	No	10,000
27-101 8	Failure to maintain adequate housekeeping.	No	500	No	5,000	1,250	No	10,000
27-101 8	Failure to perform adequate housekeeping. Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	350	No	2500	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1,760	No	5000	4,400	No	10,000
27-101 8(c)	Unsafe storage of materials less than two feet from building edge							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(b)	Unsafe storage of materials at edge of building							

	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(b)	Unsafe storage of materials less than five feet from building edge							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 8(d)	Waste dumpster, debris box or skip box not maintained in accordance with Building Department rules							
	1-2 floors	No	350	No	5000	880	No	10,000
	3-6 floors	No	880	No	5000	2,200	No	10,000
	7 or more floors	No	1760	No	5000	4,400	No	10,000
27-101 8(e)	Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	500	No	1000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-101 9(a)	Failure to safely and properly remove material/debris from construction site.	No	500	No	5,000	1,250	No	10,000
27-101 9(c)	Failure to properly store combustible material or other material and equipment.	No	900	No	5,000	2,250	No	10,000
27-102 0	Department of Transportation Permit for street/ sidewalk closing not posted.	No	400	200	5,000	1,000	500	10,000
27-102 1	Failure to provide adequate protection for sidewalks and walkways during construction operations.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000
27-102 1	Sidewalk shed not adequately maintained.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(a)	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(a)	No job site fence.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(a)	No sidewalk shed.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(a)(6)	Horizontal safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(a)(6)	Vertical safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(b)	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000

27-102 1(b)	Sidewalk shed not adequately maintained.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(b)	Sidewalk shed overloaded.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(b)	Sidewalk shed unsafe.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(b)	Sidewalk shed does not meet Building Code specifications.	No	2,000	No	5,000	5,000	No	10,000
27-102 1(c)	Job site fence defective.	No	500	No	5,000	1,250	No	10,000
27-102 1(d)	Failure to protect opening in job-site fence.	No	500	No	5,000	1,250	No	10,000
27-102 1(g)(3)	Safety netting not labeled.	No	1,000	No	5,000	2,500	No	10,000
27-102 1(g)(3)	No documentation from manufacturer on job site for safety netting.	No	1,000	500	5,000	2,500	1,250	10,000
27-102 1(g)(3)	Safety netting damaged and/or broken.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 1(g)(3)	Failure to notify DOB of an accident / complaint. Re: Public or adjacent property	No	2,000	No	5,000	5,000	No	10,000
27-102 2	Failure to provide catch Platform.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(a)(1)	Horizontal safety netting not provided.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(c)	Materials stored in safety netting.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 2(b)	Debris not removed from safety netting.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-102 3	Failure to provide warning sign.	No	500	No	5,000	1,250	No	10,000
27-102 3	Failure to provide warning lights.	No	500	No	5,000	1,250	No	10,000
27-102 4(a)	No watchman.	No	500	No	5,000	1,250	No	10,000
27-102	No flagperson.	No	1,000	No	5,000	2,500	No	10,000

4(b)								
27-1025	Failure to provide escape hatch.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1031	Failure to protect adjoining structures during excavation operations.	No	1,000	No	5,000	2,500	No	10,000
27-1032	Failure to provide protection at sides of excavation.	No	1,000	No	5,000	2,500	No	10,000
27-1035(f)(1)	Wedges used in reshores within ten feet of faade.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1038	Failure to provide adequate protection for sidewalks and walkways during demolition operations.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to carry out demolition operations in a safe and proper manner.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to safely and properly remove material debris from demolition site.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to properly store combustible material or other material and equipment during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	Failure to do adequate housekeeping during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	No permit from Fire Department for welding of cutting operations during demolition.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to do adequate housekeeping during demolition operations. Insufficient containers provided for the storage of garbage and debris.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000
27-1039	Failure to safely and properly remove material/debris from demolition site.	No	2,000	No	5,000	5,000	No	10,000
27-1039	Failure to properly store combustible material or other material and equipment during demolition operations.							
	1-2 floors	No	1000	No	5000	2500	No	10,000
	3-6 floors	No	2500	No	5000	6250	No	10,000
	7 or more floors	No	5000	No	5000	10000	No	10,000

27-1039(a)(6)	Handrails missing on stairways during demolition.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1039(a)(6)	Openings/holes not covered during demolition.							
	1-2 floors	No	500	No	5000	1250	No	10,000
	3-6 floors	No	1250	No	5000	3130	No	10,000
	7 or more floors	No	2500	No	5000	6250	No	10,000
27-1039(d)(2)	Safety zone not provided during mechanical demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1039(d)(2)	Fences not provided for safety zone during mechanical demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1039(h)	No elevator in readiness during demolition operations.	No	1,000	No	5,000	2,500	No	10,000
27-1040	Failure to adequately grade, drain or otherwise properly protect site after demolition.	No	1,000	No	5,000	2,500	No	10,000
27-1042	Failure to provide center iron on 2pt suspension scaffold multipoint suspension scafold.	No	750	No	5,000	1,880	No	10,000
27-1042	Erected, dismantled, repaired, maintained or modified supported scaffold 40 feet or higher without a permit pursuant to 27-1042-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
27-1042(g)	Failure to provide toe board on two-point or multi-point suspension scaffold.	No	750	No	5,000	1,880	No	10,000
27-1042(g)	Failure to provide guard rails on two-point of multi-point suspension scaffold.	No	750	No	5,000	1,880	No	10,000
27-1045	Failed to perform safe/proper insp./install/maint./operation of Susp. Scaff.-HAZARDOUS	No	4,000	No	5,000	10,000	No	10,000
27-1045(b)	No record of daily insp. of Susp. Scaff. performed by authorized person at site-HAZARDOUS	No	1,250	No	2,500	2,500	No	15,000
27-1046	Two-point suspension scaffold and/or ropes not in compliance with Building Code specifications.	No	750	No	5,000	1,880	No	10,000
27-1046(d)(2)	Use of scaffold with fiber ropes when upper block is greater than 100 feet above the platform.	No	750	No	5,000	1,880	No	10,000
27-1047	Multi-point suspension scaffold and/or ropes not in compliance with Building Code specifications.	No	750	No	5,000	1,880	No	10,000
27-1050.1	Failed to notify Dept. prior to use/inst. of C-hooks/outrigger beams in connection with Susp. Scaff.-HAZARDOUS	No	500	No	2,500	1,250	No	10,000
27-1054	Operation of defective Crane, Derrick or hoisting equipment.	No	3,000	No	5,000	7,500	No	10,000
27-1054	Personnel riding on material hoist.	No	3,000	No	5,000	7,500	No	10,000
27-1054(b)	Lifting of a load in excess of that approved by the Department.	No	2,000	No	5,000	5,000	No	10,000
27-1055	Improper size rope used for hoisting.	No	750	No	5,000	1,880	No	10,000
27-105	Use of hoisting cable less than 1/2" in diameter.	No	750	No	5,000	1,880	No	10,000

5(b)(1)								
27-1057	Crane/Derrick Certificate of Approval not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057	Crane/Derrick Certificate of Operation not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057	Crane/Derrick Certificate of on-site inspection not available for inspection.	No	500	No	5,000	1,250	No	10,000
27-1057(a)	Operation of boom truck without certificate of operation.	No	1,500	No	5,000	3,750	No	10,000
27-1057(b)	Operation of crane/derrick without certificate of approval/certificate of operation.	No	1,500	No	5,000	3,750	No	10,000
27-1057(d)	Failure to comply with Certificate of on-site inspection.	No	1,500	No	5,000	3,750	No	10,000
27-1057(d)	Operation of crane/derrick without certificate of on-site inspection.	No	1,500	No	5,000	3,750	No	10,000
27-1057(e)	Failure to immediately notify DOB of accident involving hoisting machinery.	No	1,000	No	5,000	2,500	No	10,000
Titles 26 and 27 of the NYC Admin. Code	Miscellaneous site safety violations.	No	500	No	2,500	1,250	No	10,000
Titles 26 and 27 of the NYC Admin. Code	Miscellaneous Construction Violations.	Yes	400	200	2,500	1,000	500	10,000
Title 26 and 27 of the NYC Admin. Code	Miscellaneous Construction Violation-HAZARDOUS	No	800	No	2,500	2,000	No	10,000
Tit. 26 & 27 of the NYC Admin. Code	Misc. Violation of condition on as of right privately owned public space.	Yes	2,500	1,250	2,500	10,000	No	10,000
Tit. 26 & 27	Miscellaneous P.A. violations	Yes	400	200	2,500	1,000	500	10,000

of the NYC Ad-min. Code								
Tit.26 & 27 of the NYC Ad-min. Code	Miscellaneous Plumbing Violation	Yes	400	200	2,500	1,000	500	10,000
Tit. 26 & 27 of the NYC Ad-min. Code	Miscellaneous HPD Demolition violations	No	500	No	2,500	1,250	No	10,000
1 RCNY 50-01(a)(5)	Failure to properly install microturbine system in accordance with regulations HAZARDOUS	No	2,500	No	2,500	6,250	No	10,000
1 RCNY 50-01(a)(9)	Failure to maintain qualified service for microturbine system HAZARDOUS	No	1,500	No	2,500	3,750	No	10,000
ZR 11-62	Violation of condition on discretionary privately owned public space	Yes	2,500	1,250	2,500	10,000	No	10,000
ZR 22-00	Illegal use in residential district.	Yes	480	240	2,500	1,200	600	10,000
ZR 25-41	Violation of parking regulations in a residential district.	Yes	480	240	2,500	1,200	600	10,000
ZR 32-00	Illegal use in commercial district.	Yes	480	240	2,500	1,200	600	10,000
ZR 36-00	Violation of parking regulations in a commercial district.	Yes	480	240	2,500	1,200	600	10,000
ZR 42-00	Illegal use in a manufacturing district.	Yes	480	240	2,500	1,250	600	10,000
ZR 42-00	Violation of parking regulations in a manufacturing district.	Yes	480	240	2,500	1,200	600	10,000
ZR 72-22	Failure to comply with the conditions and restrictions applicable to a variance granted by Board of Standards and Appeals.	Yes	480	240	2,500	1,200	600	10,000
ZR 105-20,107-321,119-111	Failure to comply with natural land features and planting requirements of special purpose districts	Yes	700	350	2,500	1,750	No	10,000
ZR	Miscellaneous violations of the Zoning Resolution.	Yes	480	240	2,500	1,200	600	10,000

Misc. 1 RCNY 9-01	Licensed Rigger failed to supervise rigger work.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-01	Licensed Rigger designated an unqualified foreman.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-02	Licensed sign hanger failed to supervise sign hanging work	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-02	Licensed sign hanger designated an unqualified foreman.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-03	Licensed Rigger failed to ensure scaffold worker met minimum req.	Yes	500	250	2,500	1,250	No	10,000
1 RCNY 9-03	Licensed sign hanger failed to ensure scaffold worker met minimum requirements.	Yes	500	250	2,500	1,250	No	10,000
26-262 (d)	Maintaining sign/structure controlled by unregistered Outdoor Ad. Co.	No	800	400	2,500	1,500	No	10,000
AC 27-147	Outdoor sign on display structure without a permit.	Yes	800	400	2,500	1,500	750	10,000
AC 27-201	Outdoor sign is contrary to approved plans.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313	Unlawful projection of outdoor light fixture or awning.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313	Unlawful projection of outdoor sign.	Yes	800	400	2,500	1,500	750	10,000
AC 27-313 through 27-315	Misc impermissible projection	Yes	800	400	2,500	1,500	750	10,000
AC 27-498 Through 27-508	Misc outdoor sign violation.	Yes	800	400	2,500	1,500	750	10,000
AC 27-499	Outdoor sign obstructs egress or required light or ventilation.	Yes	800	400	2,500	1,500	750	10,000
AC 27-499	Outdoor sign attached to fire escape or exterior stair.	Yes	800	400	2,500	1,500	750	10,000
AC 27-500 (a)	Unlawful projection of ground sign.	Yes	800	400	2,500	1,500	750	10,000
AC 27-501 (a)	Unlawful projection of outdoor wall sign.	Yes	800	400	2,500	1,500	750	10,000
AC	Outdoor wall sign covers door or window required for	Yes	800	400	2,500	1,500	750	10,000

27-501 (d)	fire Dept. access.							
AC 27-502 (a)	Projecting outdoor sign unlawfully extends beyond street line.	Yes	800	400	2,500	1,500	750	10,000
AC 27-502 (a)	Projecting outdoor sign in location prohibited by RS7-2.	Yes	800	400	2,500	1,500	750	10,000
AC 27-502 (b)	Projecting outdoor sign exceeds height limits.	Yes	800	400	2,500	1,500	750	10,000
AC 27-508	Failure to maintain outdoor sign.	Yes	800	400	2,500	1,500	750	10,000
AC Title 27	Misc outdoor sign violation.	Yes	800	400	2,500	1,500	750	10,000
1 RCNY 27-03	Prohibited sign on sidewalk shed	No	800	400	2,500	1,500	750	10,000
ZR 22-00	Illegal use in residential district.	No	480	240	2,500	1,200	600	10,000
ZR 22-30thru 22-40	Misc sign violation in R Dist under Zoning Resolution.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-32	Impermissible illuminated or flashing sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-32	Impermissible advertising sign in an R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-321 (a)	Impermissible nameplate on residential bldg in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-321 (b)	Impermissible identification sign on bldg in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-322	Impermissible "for sale" or "for rent " sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-323	Impermissible parking sign in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-341	Outdoor sign in R Dist extends more than 12 in. beyond street line.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-342	Outdoor sign in R Dist exceeds height limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 22-343	Excess number of signs on building in R Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 25-41	Violation of parking regulations in a residential district.	No	480	240	2,500	1,200	600	10,000
ZR 32-00	Illegal use in commercial district.	No	480	240	2,500	1,200	600	10,000
ZR	Impermissible advertising sign in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000

32-63								
ZR 32-64	Sign(s) in specified C Dist exceed(s) surface area restrictions.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign in C Dist exceeds illumination standards.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign not permitted in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Flashing sign not permitted in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Flashing sign in window not allowed in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	More than three illuminated signs in window of building in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-64	Illuminated sign(s) in window of building in C Dist exceed size limits	Yes	800	400	2,500	1,500	750	10,000
ZR 32-65	Sign in specified C Dist extends beyond street line limitation.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-653	Prohibited sign on awning, canopy, or marquee in C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-654	Sign exceeds permitted height for C8 Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-655	Sign exceeds permitted height for specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-656	Sign on building in specified C Dist impermissibly extends above roof.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-657	Sign on roof of building prohibited in specified C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-661	Sign in specified C Dist near park or highway exceeds size limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-662	Ad sign in specified C Dist. w/i prohibited distance of park or highway.	Yes	800	400	2,500	1,500	750	10,000
ZR 32-67	Advertising sign in specified C Dist angled towards R Dist. or Park	Yes	800	400	2,500	1,500	750	10,000
ZR 32-67	Sign in specified C district facing R district or park violates C1 district regs	Yes	800	400	2,500	1,500	750	10,000
ZR 32-68	Impermissible sign on residential or mixed building in C district	Yes	800	400	2,500	1,500	750	10,000
ZR 32-62thru 32-69	Misc. sign violation in C district under zoning resolution	Yes	800	400	2,500	1,500	750	10,000
ZR 36-00	Violation of parking regulations in a commercial district.	No	480	240	2,500	1,200	600	10,000
ZR 42-00	Illegal use in a manufacturing district.	No	480	240	2,500	1,200	600	10,000
ZR 42-51thru 42-58	Misc sign violation in M Dist. under Zoning Resolution	Yes	800	400	2,500	1,500	750	10,000
ZR	Illuminated sign in M Dist. exceeds illumination stand-	Yes	800	400	2,500	1,500	750	10,000

42-53	ards							
ZR 42-53	Flashing window sign in M Dist. prohibited.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-531	Illuminated sign in M Dist. exceeds size limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-532	Nonilluminated sign in M Dist. exceeds size limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Illuminated or flashing advertising sign in M Dist not permitted.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Illuminated or flashing non-advert sign in M Dist exceeds size limits	Yes	800	400	2,500	1,500	750	10,000
ZR 42-533	Indirectly illuminated sign exceeds size limit in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-541	Unlawful projection of sign in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-542	Unlawful sign on awning, canopy or marquee in M Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-543	Sign in M Dist. exceeds height limit.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(a)	Sign in M Dist. within 200 ft. of park or highway exceeds 500 sq. ft.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(a)	Advertisting sign in M Dist. prohibited w/i 200 ft. of park or highway.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-55(b)	Sign in M Dist exceeds size limits.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-561	Advertising sign in M Dist. improperly angled toward R Dist. or park.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-561	Sign in M Dist. facing R Dist or park violates C1 Dist regs.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-562	Illuminated sign in M Dist improperly angled toward R or C Dist.	Yes	800	400	2,500	1,500	750	10,000
ZR 42-562	Indirect illuminated sign in M Dist w/i 500 ft of R or C Dist. over 58 ft. H.	Yes	800	400	2,500	1,500	750	10,000
ZR Misc Signviolation	Misc sign violation under the Zoning Resolution	Yes	800	400	2,500	1,500	750	10,000
26-260 (a)	Outdoor Ad. Co. engages in outdoor advertising business w/o valid registration.	No	10,000	5,000	15,000	20,000	No	25,000
26-260 (b)	Outdoor Ad. Co. fails to submit information prescribed by department.	No	10,000	5,000	15,000	20,000	No	25,000
26-260 (c)	Outdoor Ad. Co. fails to post bond or provide other form of security.	No	10,000	5,000	15,000	20,000	No	25,000
26-261 (a)	Outdoor Ad. Co. fails to submit accurate sign inventory info.	No	10,000	5,000	15,000	20,000	No	25,000
26-261 (b)	Outdoor Ad. Co. fails to display required info on sign/ sign location.	No	10,000	5,000	15,000	20,000	No	25,000

26-262 (a)(1)	Outdoor Ad. Co. sign violates ZR, AC or DOB rule. HAZARDOUS.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(1)	Outdoor Ad. Co. sign violates ZR, AC or DOB rule.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(2)	Outdoor Ad. Co. makes available sign which is in violation of ZR/AC/DOB rules.	No	10,000	5,000	15,000	20,000	No	25,000
26-262 (a)(3)	Outdoor Ad. Co. makes available sign or registration to unregistered Outdoor Ad. Co.	No	10,000	5,000	15,000	20,000	No	25,000
27-147 &26-262	Outdoor Ad Co Sign on display without permit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-201 &26-262	Outdoor Ad Co sign is contrary to approved plans	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 &26-262	Outdoor Ad Co light fixture or awning has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 &26-262	Outdoor Ad Co Sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-499 &26-262	Outdoor Ad Co sign obstructs egress or required light or ventilation	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-499 &26-262	Outdoor Ad Co sign is attached to fire escape or exterior stair	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-500 (a) &26-262	Outdoor Ad Co ground sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-501 (a) &26-262	Outdoor Ad Co wall sign has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-501 (d) &26-262	Outdoor Ad Co wall sign blocks FDNY access	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (a) &26-262	Outdoor Ad Co sign unlawfully projects beyond street line	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (a) &26-262	Outdoor Ad Co projecting sign in location prohibited by RS7-2	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-502 (b) &26-262	Outdoor Ad Co projecting sign exceeds height limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000

27-508 &26-262	Outdoor Ad Co failed to maintain sign	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-313 thru 27-315 & 26-262	Misc. projection violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
27-498 thru 27-508 & 26-262	Misc. sign violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
AC Title 27& 26-262	Misc. sign violation by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
1 RCNY 27-03	Prohibited sign on s/w shed by Outdoor Ad. Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
1 RCNY 49-02	Outdoor Ad. Co. fails to cooperate with DOB sign related investigation	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-03	Outdoor Ad. Co. fails to comply w/Commissioner's sign related order. HAZARDOUS	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-03	Outdoor Ad. Co. fails to comply w/Commissioner's sign related order.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-12(e)	Outdoor Ad. Co. fails to notify DOB of material change in registration info.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-12(e)	Affiliated Outdoor Ad. Co. does business before notice of material change is received.	No	10,000	5,000	15,000	20,000	No	25,000
1 RCNY 49-15(h)	Outdoor Ad. Co. fails to amend sign inventory information as prescribed by DOB Rule.	No	10,000	5,000	15,000	20,000	No	25,000
ZR 22-32 & AC 26-262	Outdoor Ad Co has impermissible illuminated or flashing sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-32 & AC 26-262	Outdoor Ad Co has impermissible advertising sign in a Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR	Outdoor Ad Co has impermissible nameplate on resid-	Yes	10,00	5,000	15,00	20,00	10,00	25,000

22-321 (a)& AC 26-262	ential bldg in Residential District		0		0	0	0	
ZR 22-321 (b)& AC 26-262	Outdoor Ad Co has impermissible identification sign on bldg in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-322 & AC 26-262	Outdoor Ad Co has impermissible 'for sale" or "for rent" sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-323 & AC 26-262	Outdoor Ad Co has impermissible parking sign in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-341 & AC 26-262	Outdoor Ad Co sign in Residential District extends >12in. Beyond street line	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-342 & AC 26-262	Outdoor Ad Co sign in Residential District exceeds height limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-343 & AC 26-262	Outdoor Ad Co has excess number of signs on bldg in Residential District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 22-30 to 22-40 & AC 26-262	Misc. sign violation in Residential District under Zoning Resolution by Outdoor Ad	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-63 & AC 26-262	Outdoor Ad Co advertising sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co sign(s) in specified Commercial District exceed surface area limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co illuminated sign in Commercial District exceeds illumination standards	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC	Outdoor Ad Co Illuminated sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000

26-262 ZR 32-64 & AC 26-262	Outdoor Ad Co flashing sign not permitted in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co flashing sign in window not allowed in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co has more than 3 illuminated window signs in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-64 & AC 26-262	Outdoor Ad Co illuminated window sign(s) in Commercial District exceed size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-65 & AC 26-262	Outdoor Ad Co sign in specified Commercial District extends beyond street line limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-653 & AC 26-262	Outdoor Ad Co sign on awning, canopy, or marquee prohibited in commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-654 & AC 26-262	Outdoor Ad Co sign exceeds permitted height for commercial 8 District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-655 & AC 26-262	Outdoor Ad Co sign exceeds permitted height for specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-656 & AC 26-262	Outdoor Ad Co sign in specified Commercial District impermissibly extends above roof	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-657 & AC 26-262	Outdoor Ad Co sign on roof of bldg prohibited in specified Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-661 & AC 26-262	Outdoor Ad Co sign in Commercial District near park or highway exceeds size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-662 & AC 26-262	Outdoor Ad Co sign in Commercial District w/i prohibited distance of park or highway	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR	Outdoor Ad Co sign in specified Commercial District	Yes	10,00	5,000	15,00	20,00	10,00	25,000

32-67 & AC 26-262	angled towards Residential District or park		0		0	0	0	
ZR 32-67 & AC 26-262	Outdoor Ad Co Sign in Commercial District facing Residential District or park violates commercial 1 District regs	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-68 & AC 26-262	Impermissible Outdoor Ad Co sign on residential or mixed bldg in Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 32-62 through 32-69 & AC 26-262	Misc. sign. Violation in Commercial District under Zoning Resolution by Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-53 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District exceeds illumination standards	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-531 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-532 & AC 26-262	Outdoor Ad Co nonilluminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co illuminated or flashing ad sign in Manufacturing District not permitted	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co illuminated or flashing non-ad sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-533 & AC 26-262	Outdoor Ad Co indirectly illuminated sign in Manufacturing District exceeds size limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-541 & AC 26-262	Outdoor Ad Co sign in Manufacturing District has unlawful projection	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-542 &AC 26-262	Unlawful Outdoor Ad Co sign on awning canopy or marquee in Manufacturing District	Yes	10,000	5,000	15,000	20,000	10,000	25,000

ZR 42-55(a) & AC 26-262	Outdoor Ad Co sign in Manufacturing District w/i 200 ft of park or highway > 500 sq ft.	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-55(a)& AC 26-262	Outdoor Ad Co sign in Manufacturing District prohibited w/i 200 ft of park or highway	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-55(b)& AC 26-262	Outdoor Ad Co sign in Manufacturing District exceeds size limits	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-561 & AC 26-262	Outdoor Ad Co sign in Manufacturing District improperly angled toward Residential District or park	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-561 & AC 26-262	Outdoor Ad Co sign in Manufacturing District facing Residential District or park violates C1 district regs	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-562 & AC 26-262	Outdoor Ad Co illuminated sign in Manufacturing District improperly faces Residential or Commercial District	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-562 & AC 26-262	Outdoor Ad Co indirect illumin sign in Manufacturing District near Residential or Commercial District > 58 ft high	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-51through 42-58 &AC 26-262	Misc. sign violation in Manufacturing District under zoning Resolution by Outdoor Ad Co.	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR Misc-Sign-Violation	ZR Misc. sign violation under the Zoning Resolution by an Outdoor Ad Co	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-53	Outdoor Ad Co flashing window sign in Manufacturing District Prohibited	Yes	10,000	5,000	15,000	20,000	10,000	25,000
ZR 42-543	Outdoor Ad Co sign in Manufacturing district exceeds height limit	Yes	10,000	5,000	15,000	20,000	10,000	25,000

Buildings Penalty Schedule II: Effective For Notices of Violation With a Date of Occurrence On or After July 1, 2008:

The Penalty Schedule set forth below, Buildings Penalty Schedule II, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or after July 1, 2008.

1.) **Legal References.** The legal references referred to in this Penalty Schedule include the following:

· Title 28 of the New York City (NYC) Administrative Code. References to Title 28 of the NYC Administrative Code begin with "28-" (for example, "28-201.1). The citation "28-Misc." refers to provisions of Title 28 that are not specifically designated elsewhere in the Penalty Schedule.

· Title 27 of the NYC Administrative Code (also known as the "1968 Building Code"). References to title 27 of the NYC Administrative Code begin with "27-" (for example, "27-371"). The citation "27-Misc." refers to provisions of Title 27 that are not specifically designated elsewhere in the Penalty Schedule.

· The "New York City Construction Codes," which consist of:-The New York City plumbing code (PC)-The New York City building code (BC)-The New York City mechanical code (MC)-The New York City fuel gas code (FGC)

· References to these New York City Construction Codes are designated by the various abbreviations set out above (for example, "BC3010.1"). The citations "BC-Misc.", "PC-Misc.", "MC-Misc." and "FGC-Misc." refer to provisions of the New York City building, plumbing, mechanical or fuel gas code that are not specifically designated elsewhere in the Penalty Schedule.

· Appendices to the New York City Construction Codes (the New York City Construction Codes include all enacted appendices, as per §28-102.6 of the NYC Administrative Code). References to Appendices are cited by using the abbreviation for the particular Construction Code followed by the applicable Appendix letter (for example, "H") followed by the applicable section number (for example, "BC H103.1").

· The NYC Zoning Resolution (ZR) and the Rules of the City of New York (RCNY). References to the Zoning Resolution and to the Rules of the City of New York are designated by the abbreviations "ZR" and "RCNY" (for example, "ZR25-41"; "1 RCNY9-01"). The citations "1 RCNY-Misc." and "ZR-Misc." refer to provisions of 1 RCNY or the Zoning Resolution that are not specifically designated elsewhere in the Penalty Schedule.

· Reference Standards that pertain to Title 27 of the NYC Administrative Code (RS). References to the Reference Standards are designated by the abbreviation set out above (for example, "RS-16"). The citation "RS-Misc." refers to Reference Standards that are not specifically designated elsewhere in the Penalty Schedule.

2.) **Citations to the New York City Construction Codes.** Whenever a section or subdivision of the New York City Construction Codes is cited or referred to, subordinate consecutively numbered subdivisions or paragraphs of the cited provision are deemed to be included in such reference unless the context or subject matter requires otherwise.

3.) **Classification of Violations.** Pursuant to the Rules of the Department of Buildings set out in Title 1 of the Rules of the City of New York, for purposes of classifying violations pursuant to section 28-201.2 of the Administrative Code, the following terms shall have the following meanings:

· IMMEDIATELY HAZARDOUS VIOLATION. Immediately hazardous violations are those specified as such by the New York City Construction Codes, or those where the violating condition poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action, or, with respect to outdoor advertising, those where the violation and penalty are necessary as an economic disincentive to the continuation or the repetition of the violating condition.) Immediately hazardous violations shall be denominated as Class 1 violations.

· MAJOR VIOLATION. Major violations are those specified as such by the New York City Construction Codes or those where the violating condition affects life, health, safety, property, or the public interest but does not require

immediate corrective action, or, with respect to outdoor advertising, those where the violation and penalty are appropriate as an economic disincentive to the continuation or the repetition of the violating condition. Major violations shall be denominated as Class 2 violations.

· LESSER VIOLATION. Lesser violations are those where the violating condition has a lesser effect than an immediately hazardous (Class 1) or major violation (Class 2) on life, health, safety, property, or the public interest. Lesser violations shall be denominated as Class 3 violations.

In this Penalty Schedule, the classification of any particular charge is indicated in the column of the Penalty Schedule that is entitled ""Classification." In some instances, where so indicated in this Penalty Schedule, a violation of a particular section of law may be charged by the Department of Buildings as either an "Class 1" violation, or as a "Class 2" violation, or as a "Class 3" violation, depending upon the assessment by the Department of Buildings as to the classification that is warranted for the particular violation in question.

4.) **Aggravated Penalties:** If a Notice of Violation charges a violation as an Aggravated I or as an Aggravated II violation and the respondent is found in violation, then aggravated penalties of the first order ("Aggravated I") or aggravated penalties of the second order ("Aggravated II") penalties will be imposed. This Penalty Schedule sets forth the Aggravated I or Aggravated II penalties that will apply. Pursuant to the Rules of the Department of Buildings set out in Title 1 of the Rules of the City of New York, the Department of Buildings will charge a violation as an Aggravated I or Aggravated II violation under the following circumstances: (1) Aggravated penalties of the first order. Aggravated penalties of the first order ("Agg. I") shall be imposed in the following instances:

(i) Aggravated penalties of the first order. Aggravated penalties of the first order ("Agg. I") shall be imposed when evidence establishes the same condition or the same charge under the New York City Construction Codes or the predecessor charge under the laws in effect prior to July 1, 2008, in a prior enforcement action against the same owner or responsible party during the previous three years.

(2) Aggravated penalties of the second order. Aggravated penalties of the second order ("Agg. II") shall be imposed in the following instances:

(i) When the respondent or defendant is found in violation of any law or rule enforced by the Department where the violation of law is accompanied by or results in an accident, or poses a substantial risk thereof; is accompanied by, or results in a fatality or serious injury; or where the violating condition affects a significant number of people; or

(ii) Where the respondent refuses to give the Department of Buildings requested information necessary to determine the condition of a building or site; or

(iii) Where the respondent has a history of non-compliance with laws or rules enforced by the Department of Buildings at one or more locations, including but not limited to a pattern of unreasonable delays in correcting violations, a pattern of failing to obey Stop Work Orders, filing false documents, or multiple defaults.

5.) **Mitigation.** A violation that is otherwise subject to a standard penalty or to an Aggravated I penalty is potentially eligible for a mitigated penalty if and only if this Penalty Schedule so indicates by a "Yes" in the "Mitigated Penalty" column. If a violation is potentially eligible for a mitigated penalty, a mitigated penalty will be imposed if the respondent proves at the hearing that the violating condition was corrected prior to the first scheduled hearing date at ECB. (A certificate of correction must thereafter be filed by the respondent with the Department of Buildings in accordance with its Rules.) If a mitigated penalty is imposed, that mitigated penalty will be half of the penalty amount rounded to the nearest dollar (i.e., either half of the standard penalty amount or half of the Aggravated I penalty amount, whichever is applicable) that would otherwise have been imposed at a hearing for that particular violation. A mitigated penalty is never available in connection with a violation that has been charged by the Department of Buildings as an Aggravated II charge. (This is the case even if there is a "Yes" in the "Mitigated Penalty" column in this Penalty Schedule.)

6.) **Additional Daily and Monthly Penalties.** Additional daily penalties may be imposed in connection with certain Class 1 violations. Additional monthly penalties may be imposed in connection with certain Class 2 violations. If such penalties are sought by the Department of Buildings in connection with a particular Class 1 or Class 2 charge, that will be indicated on the Notice of Violation.

Such daily or monthly penalties, if applicable, are in addition to the set penalty amount that also is indicated in this Penalty Schedule as applicable to the type of violation in question taking into account the classification level and Aggravated level of the particular violation. Imposition of such additional daily and monthly penalties is authorized pursuant to Section 28-202.1 of the New York City Administrative Code.

Accrual of Daily Penalties: Daily penalties, if applicable, will accrue at the rate set forth in this Penalty Schedule per day for a potential total of forty-five days running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation unless the violating condition is proved by the respondent at the hearing to have been corrected prior to the end of that forty-five day period, in which case the daily penalties will accrue for every day up to the date of that proved correction.

Accrual of Monthly Penalties: Monthly penalties, if applicable, accrue at the rate set forth in this Penalty Schedule per month for a potential total of one month running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation unless the violating condition is proved by the respondent at the hearing to have been corrected prior to the end of a month period.

7.) **Cures.** Certain violations are potentially eligible for a cure by correction within forty days running from the date of the Order to Correct of the Commissioner of the Department of Buildings that is set forth in the Notice of Violation. This Penalty Schedule indicates which violations are potentially subject to cure. A cure constitutes an admission of the charged violation; results in a finding of violation in connection with that charged violation; dispenses with the need for a hearing at ECB; may constitute a prior violation in relation to later-issued violations, for purposes of determining if those later-issued violations have an Aggravated I or Aggravated II status; and results in a zero penalty. As is indicated in this Penalty Schedule, and consistent with the provisions of Section 28-204.2 of the NYC Administrative Code, all violations that are designated as Class 3 violations are eligible for cure. Also some, but not all, violations that are designated as Class 2 violations are eligible for cure. (Note: A violation that has been charged as an Aggravated II violation is never eligible for a cure. This is the case even if there is a "Yes" in the "Cure" column in this Penalty Schedule.) In order to cure, the respondent must file a certificate of correction acceptable to the Department of Buildings with the Department of Buildings within the forty day period.

8.) **Stipulations.** Stipulations are agreements between the Department of Buildings and a respondent, subject to approval by the Environmental Control Board. If a violation is potentially eligible for a stipulation, that is indicated in this Penalty Schedule. Even where a violation is potentially eligible for a stipulation, a stipulation is only available if the Department of Buildings in fact makes an offer of such a stipulation in connection with the particular Notice of Violation. (Note: A violation that has been charged as an Aggravated II violation is never eligible for a stipulation. Also, a violation that is charged as Class 1 is never eligible for a stipulation. This is the case even if there is a "Yes" in the "Stipulation" column in this Penalty Schedule.) There are both pre-hearing stipulations, and hearing stipulations. Those terms are defined below.

If a respondent enters into a stipulation (whether a pre-hearing stipulation or a hearing stipulation), that stipulation constitutes an agreement whereby the Department of Buildings agrees not to issue another violation to the same respondent for the same violating condition for a period of seventy-five days running from the first scheduled hearing date; and whereby the respondent admits the violation, resulting in a finding of violation; and whereby the respondent agrees to correct the violation and to file an acceptable Certificate of Correction with the Department of Buildings within the seventy-five day period running from the first scheduled hearing date. Additionally, in connection with pre-hearing stipulations only (not hearing stipulations), a lesser penalty is imposed.

The Department of Buildings will in no event offer a stipulation if the violation has been charged as an Aggravated II violation, or has been deemed "Class 1" by the Issuing Officer on the NOV, or if the charge on the Notice of Violation is amended to indicate an "Class 1" or a "Class 2" violation that is not potentially eligible to receive a stipulation.

Pre-hearing stipulations: A "pre-hearing stipulation" is a stipulation that is offered and can be accepted only prior to the first scheduled hearing date, or else on the first scheduled hearing date but prior to any actual hearing on that date. A violation is eligible for a pre-hearing stipulation if this Penalty Schedule so indicates (indicated via a "Yes" in the "Stipulation" column of this Penalty Schedule) and if the Department of Buildings in fact offers a pre-hearing stipulation in connection with the particular Notice of Violation in question. Pre-hearing stipulation offers are made via a mailed notice. (If a respondent is uncertain whether a pre-hearing stipulation offer has been made in connection with a particular Notice of Violation, the respondent may call ECB to inquire.) No pre-hearing stipulation shall take effect unless it is offered by the Department of Buildings prior to the first scheduled hearing date, signed by respondent prior to or on the first scheduled hearing date, and approved by ECB in writing.

If a pre-hearing stipulation is offered in connection with a particular Notice of Violation and is timely accepted by the respondent, and if the respondent then files an acceptable Certificate of Correction within the seventy-five-day time period, then the penalty imposed for that violation will be half of the penalty amount (rounded to the nearest dollar) of the penalty amount that would otherwise have been imposed at a hearing for that particular violation.

However, if a pre-hearing stipulation is offered in connection with a particular Notice of Violation and is timely accepted by the respondent, but the respondent in connection with a particular pre-hearing stipulation then fails to file an acceptable certificate of correction with the Department of Buildings within the seventy-five-day time period, then the penalty imposed for that violation will rise to the full penalty amount that would have been imposed at a hearing if a hearing had been held.

Hearing stipulations: A hearing stipulation is a stipulation that is offered and can be accepted at a hearing. A violation is eligible for a hearing stipulation if this Penalty Schedule so indicates (via a "yes" in the "Stipulation" column of this Penalty Schedule) and if the Department of Buildings in fact offers a hearing stipulation at the hearing in connection with the particular Notice of Violation.

If a hearing stipulation is offered in connection with a particular Notice of Violation and is accepted by the respondent, it constitutes an agreement as described above, whereby respondent agrees to correct the violation and file an acceptable certificate of correction within the seventy-five day period, and whereby the Department of Buildings agrees not to issue another violation to the same respondent for the same violating condition within that seventy-five day time period. No hearing stipulation shall take effect unless it is offered by the Department of Buildings at the hearing, accepted by the respondent at that hearing, and is approved in writing by ECB.[Table 1]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty
1 RCNY-Misc, RS-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY-Misc, RS-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY-Misc, RS-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500

1 RCNY 27-03	Class 1	Prohibited sign on sidewalk shed or construction fence.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
1 RCNY 9-01	Class 1	Licensed Rigger designated an unqualified foreman.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY 9-01	Class 2	Licensed Rigger designated an un-qualified foreman.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY 9-03	Class 1	Licensed Rigger failed to ensure scaffold worker met minimum req.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
1 RCNY 9-03	Class 2	Licensed Rigger failed to ensure scaffold worker met minimum req.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
1 RCNY 49-03	Class 1	Outdoor Ad. Co. failed to comply with Commissioner's sign-related Order.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
27-185 & BC 3007.1	Class 2	Operation of an elevator without equipment use permit or service equipment Certificate of Compliance.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
27-228.5	Class 2	Failure to file an Architect/Engineer report certifying exit/directional signs are connected to emergency power source/storage battery equipment.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
27-369 & BC 1020.2	Class 1	Failure to provide unobstructed exit passageway.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000
27-371 & BC 715.3.7	Class 2	Exit door not self-closing.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

27-382 & BC 1006.3	Class 2	Failure to provide power for emergency exit lighting.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-383(b) & BC 403.16	Class 1	Failure to install photoluminescent exit path marking in a high-rise building.	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000			
27-391 & BC 3002.3	Class 2	Emergency signs at elevator call stations missing, defective or non-compliant with section requirements.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

[Table 2]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
27-393 & BC 1019.1.7	Class 2	Stair identification signs missing and/or defective.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-509 & BC 3111.1	Class 3	Fence exceeds permitted height.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500			
27-528 & BC 1024.1.3	Class 2	Approved Place of Assembly plans not available for inspection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-901(z)(1) & PC 301.6	Class 2	Piping installed in elevator/ counterweight hoistway.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-904 & FGC 406.6.2	Class 1	Gas being supplied to building without inspection and certification by DOB.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
27-904 & FGC 406.6.2	Class 2	Gas being supplied to building without inspection and certification by DOB.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-921(a) & PC 107.3	Class 1	Failure to have new or altered plumbing system tested.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
27-921(a) & PC 107.3	Class 2	Failure to have new or altered plumbing system tested.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
27-972(h) & BC 907.2.12	Class 2	Failure to install an acceptable two-way voice communication system with central station connection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

.3

27-Misc, 28-Misc, BC-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000		
27-Misc, 28-Misc, BC-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		
27-Misc, 28-Misc, BC-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500		
28-104.2.2	Class 2	Failure to provide approved/accepted plans at job site at time of inspection.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.1	Class 2	Failed to obtain a temporary construction permit prior to installation/use of sidewalk shed.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.1	Class 1	Work without a Permit	No	No	$1,600	Yes	$8,000	$4,000	$16,000	$8,000	$25,000		
28-105.1	Class 2	Work without a permit.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		

[Table 3]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty		
28-105.1	Class 3	Work without a permit.		Yes	Yes	$200	Yes	$500	$500	$500	$500	$500	
28-105.1	Class 2	Work without a permit: Expired permit.		Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
28-105.1	Class 1	Construction or alteration work w/o a permit in manufacturing district for residential use.		No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
28-105.1	Class 2	Construction or alteration work w/o a permit in manufacturing district for residential use.		No	No	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000	
28-105.1	Class 1	Demolition work without required demolition permit		No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000	

28-105.1	Class 1	Plumbing work without a permit in manufacturing district for residential use.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000		
28-105.1	Class 2	Plumbing work without a permit in manufacturing district for residential use.	No	Yes	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000		
28-105.1	Class 2	Outdoor sign on display structure without a permit.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000		
28-105.1	Class 1	Outdoor Ad Co sign on display structure without a permit.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000		
28-105.11	Class 2	Failure to post permit for work at premises	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000		
28-105.12.1	Class 2	Outdoor sign permit application contrary to Code and ZR requirements	No	No	$2,400	No	$10,000	$10,000	$10,000	$10,000	$10,000		
28-105.12.2	Class 1	Work does not conform to approved construction documents and/or approved amendments	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000		
28-105.12.2	Class 2	Work does not conform to approved construction documents and/or approved amendments.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000		
28-105.12.2	Class 3	Work does not conform to approved construction documents and/or approved amendments.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500		
28-105.12.2	Class 1	Work does not conform to approved construction documents and/or approved amendments in a manufacturing district for residential use.	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000		
28-105.12.2	Class 2	Work does not conform to approved construction documents and/or approved amendments in a manufacturing district for residential use.	No	No	$2,400	Yes	$10,000	$6,000	$10,000	$10,000	$10,000		

[Table 4]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty

	n		alty	alty	alty		alty					
28-105.12.2	Class 1	Place of Assembly contrary to approved construction documents.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-105.12.2	Class 2	Place of Assembly contrary to approved construction documents.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
28-105.12.2	Class 1	Outdoor Ad Co sign is contrary compliance with construction documents.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000	
28-110.1	Class 1	Failure to provide evidence of workers attending construction & safety course	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
28-110.1	Class 1	Failure to conduct workers' site-specific safety orientation program per site safety plan.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
28-117.1	Class 1	Operation of a Place of Assembly without a current Certificate of Operation.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
28-117.1	Class 2	Operation of a Place of Assembly without a current Certificate of Operation.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
28-118.2	Class 1	New building or open lot occupied without a valid certificate of occupancy.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 1	Altered/changed building occupied without a valid Certificate of Occupancy as per §28-118.3.1-§28-118.3.2.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 2	Altered/changed building occupied without a valid Certificate of Occupancy as per §28-118.3.1-§28-118.3.2.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
28-118.3	Class 1	Change in occupancy/use of C of O as per §28-118.3.1-§28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
28-118.3	Class 2	Change in occupancy/use of C of O as per §28-118.3.1-§28-118.3.2 by operating a Place of Assembly as per when current C	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	

of O does not allow such occupancy.

28-118.3.2	Class 1	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			
28-201.1	Class 1	Unlawful Acts. Failure to comply with an order of the Commissioner.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			

[Table 5]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
28-118.3.2	Class 2	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
28-118.3.2	Class 3	Occupancy contrary to that allowed by the Certificate of Occupancy or Building Department records.	Yes	Yes	$400	Yes	$500	$500	$500	$500	$500			
28-202.1	Class 1	Additional daily penalty for Class 1 violation of 28-210.1-1 or 2 family converted to 4 or more families.	No	No	1,000/day	No	$25,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly penalty for continued violation of 28-210.1	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-202.1	Class 1	Additional daily civil penalties for continued violations.	No	No	$1,000/day	No	$25,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly civil penalties for continued violations.	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-202.1	Class 2	Additional monthly penalty for continued violation of 28-210.2	No	No	$250/month	No	$10,000	NA	NA	NA	NA			
28-204.4	Class 2	Failure to comply with the commissioner's order to file a certificate of correction with the Department of Buildings.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
28-	Clas	Unlawfully continued work while on	No	No	$4,8	No	$24,	$12,	$25,	$24,	$25,			

207.2.2	s 1	notice of a stop work order.			00		000	000	000	000	000				
28-210.1	Class 1	Residence altered for occupancy as a dwelling from 1 or 2 families to 4 or more families.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000				
28-210.1	Class 2	Residence altered for occupancy as a dwelling for more than the legally approved number of families	No	No	$1,200	No	$6,000	$3,000	$10,000	$6,000	$10,000				
28-210.2	Class 2	Maintain or permit conversion of industrial/manufacturing bldg to residential use w/out C of O/code compliance	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000 [$25,000]				

[Table 6]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty				
28-210.2	Class 2	Plumbing work contrary to approved app'n/plans that assists/maintains convers'n of indust/manuf occupancy for resid use	No	Yes	$1,500	Yes	$7,500	$3,750	$10,000	$7,500	$10,000				
28-211.1	Class 1	Filed a certificate, form, application etc., containing a material false statement(s).	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000				
28-211.1	Class 1	Filed a certificate of correction or other related materials containing material false statement(s).	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000				
28-216.12.1	Class 2	Failure to submit required report of inspection of potentially compromised buildings.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000				
28-216.12.6	Class 1	Failure to immediately notify Department that building or structure has become potentially compromised.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000				
28-301.1	Class 1	Failure to maintain building in code-compliant manner.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000				
28-301.	Class 2	Failure to maintain building in code-compliant manner.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000				

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28-301.1	Class 3	Failure to maintain building in code-compliant manner.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Use of prohibited door and/or hardware per BC 1008.1.8; 27-371(j).	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Use of prohibited door and/or hardware per BC 1008.1.8; 27-371(j).	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: illumination for exits, exit discharges and public corridors per BC 1006.1;27-381.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: illumination for exits, exit discharges and public corridors per BC 1006.1;27-381.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7;27-392	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7;27-392	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			

[See Table 6] [Table 7]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: high-rise to provide exit sign requirement(s) within exits per BC 1011.1.1;27-383.1.			No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
28-301.	Class 2	Failure to maintain building in code-compliant manner: high-rise to provide			Yes	No	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000	

1		exit sign requirement(s) within exits per BC 1011.1.1;27-383.1.												
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of emergency power or storage battery connection to exit signs per BC 1011.5.3; 27-384 (c).	No	No	$4,800	Yes	$24,000	$12,000	$25,000	$24,000	$25,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of emergency lighting for exits, exit discharges and public corridors per BC 1006.1; 27-542.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: lack of emergency lighting for exits, exit discharges and public corridors per BC 1006.1; 27-542.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: failure to provide non-combustible proscenium curtain per BC410.3.5; 27-546.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: no fire stopping per BC 712.3; 27-345.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
28-301.1	Class 2	Failure to maintain building in code-compliant manner: no fire stopping per BC 712.3; 27-345.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000			
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Improper exit/exit access doorway arrangement per BC 1014.2;27-361.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			
28-301.1	Class 1	Failure to maintain building in a code compliant manner. Failure to provide number of required means of egress for every floor per BC 1018.1 & 27-366.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			

[Table 8]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty			
28-301.	Class 1	Failure to maintain building in code-compliant manner: service equipment-elevat-				No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000

1		or per BC 3001.2;27-987.												
28-301.1	Class 2	Failure to maintain building in code-compliant manner: service equipment-elevator per BC 3001.2;27-987.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 3	Failure to maintain building in code-compliant manner: service equipment-elevator per BC 3001.2;27-987.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-301.1	Class 1	Failure to maintain building in code-compliant manner: service equipment-boiler.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: service equipment-boiler.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 3	Failure to maintain building in code-compliant manner: service equipment-boiler.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-301.1	Class 1	Failure to maintain building in code-compliant manner: lack of a system of automatic sprinklers where required per BC 903.2; 27-954.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: lack of a system of automatic sprinklers where required per BC 903.2; 27-954.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Fail to maintain building in code-compliant manner re: installation/maintenance of plumbing materials/ equipment per PC102.3;27-902.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Gas vent reduced or undersized as per FGC 504.2;27-887.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

[Table 9]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II Default-MaximumPenalty
28-301.	Class 2	Failure to maintain building in code-compliant manner: failure to comply with					No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

1		law for water supply system per PC 602.3;27-908(c).									
28-301.1	Class 2	Failure to maintain building in code-compliant manner: failure to comply with law for drainage system per PC 702.1;27-911.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: Plumbing fixture(s) not trapped and/or vented per PC 916.1 & PC 1002.1; 27-901(o).	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-301.1	Class 2	Failure to maintain building in a code compliant manner. Exhaust discharge must be no closer than 10 feet from building openings as per RS 2-2.1.4 & MC 401.5.2	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Misc sign violation by Outdoor Ad Co as per 27-498 through 27-508 & BC H103.1.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-301.1	Class 2	Failure to maintain sign in accordance w Tit. 27; Tit. 28; ZR; RCNY	No	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-302.1	Class 1	Failure to maintain building wall(s) or appurtenances.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-302.1	Class 2	Failure to maintain building wall(s) or appurtenances.	Yes	Yes	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
28-302.1	Class 3	Failure to maintain building wall(s) or appurtenances.	Yes	Yes	$200	Yes	$500	$500	$500	$500	$500
28-302.4	Class 2	Failure to submit a required report of critical examination documenting condition of exterior wall and appurtenances.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-302.5	Class 2	Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-303.7	Class 2	Failure to file a complete boiler inspection report	No	No	$500	No	$2,500	$1,250	$5,000	$2,500	$10,000

28-305.4.4	Class 2	Failure to submit required report of condition assessment of retaining wall	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-305.4.6	Class 1	Failure to immediately notify Department of unsafe Condition observed during condition assessment of retaining wall.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000
28-305.4.7.3	Class 2	Failure to file an amended condition assessment acceptable to Department indicating correction of unsafe conditions.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-401.16	Class 2	Held self out as licensed, certified, registered etc., to perform work requiring a DOB license w/o obtaining such license.	No	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000

[Table 10]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty		
28-401.9	Class 1	Failure to file evidence of liability &/or property damage insurance.					No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
28-401.9	Class 1	Failure to file evidence of compliance with WorkersComp, law and/or disability benefits law.					No	No	$1,250	No	$6,250	$3,125	$12,500	$6,250	$25,000
28-404.1	Class 1	Supervision or use of rigging equipment without a Rigger's license.					No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000
28-404.4.1	Class 2	Licensed Master/Special Rigger failed to place appropriate "Danger" sign while using rigging equipment.					Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
28-405.1	Class 1	Supervision or use of power-operated hoisting machine without a Hoisting Machine Operator's license.					No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
28-408.1	Class 1	Performing unlicensed plumbing work without a master plumber license.					No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-	Clas	Hoisting, lowering, hanging, or attaching					No	No	$4,8	No	$24,	$12,	$25,	$24,	$25,

415.1	s 1	of outdoor sign not performed or supervised by a properly licensed sign hanger.			00		000	000	000	000	000
28-502.2	Class 1	Outdoor Ad. Co. engaged in outdoor advertising business without a Valid registration.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.2.1	Class 1	Outdoor Ad. Co. failed to submit complete/accurate info. as prescribed in 1 RCNY Chap. 49.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.2.2	Class 1	Outdoor Ad. Co. failed to post, renew or replenish bond or other form of security.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
28-502.5	Class 1	Outdoor Ad. Co. failed to post required information at sign location.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
Misc. Chapter 4 of Title 28-Unlicensed Activity	Class 1	Illegally engaging in any business or occupation without a required license or other authorization.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
28-502.6	Class 1	Misc sign viol'n by outdoor ad co of Tit. 27; Tit. 28; ZR; or BC	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
BC 1016.2	Class 2	Failure to maintain building in code-compliant manner: provide required corridor width per BC 1016.2; 27-369	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000
BC 3010.1 & 27-1006	Class 1	Failure to promptly report an elevator accident involving personal injury requiring the services of a physician or damage to property.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000
BC 3301.2 & 27-1009(a)	Class 1	Failure to safeguard all persons and property affected by construction operations.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
BC 3301.2 & 27-1009(a)	Class 2	Failure to safeguard all persons and property affected by construction operations.	No	No	$1,200	No	$6,000	$3,000	$10,000	$6,000	$10,000

[Table 11]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Penalty	Maximum Penalty
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No guard rails	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No toe boards.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
BC 3301.2 & 27-1009 (a)	Class 1	Failure to institute/maintain safety equipment measures or temporary construction-No handrails.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000	
BC 3301.8	Class 1	Failure to immediately notify the Department of an accident at construction/demolition site	No	No	$2,500	No	$12,500	$6,250	$25,000	$12,500	$25,000	
BC 3301.9 & 27-1009 (c)	Class 2	Failure to provide/post sign(s) at job site pursuant to subsection.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3303.3 & 27-1020	Class 2	Failure to post D.O.T. permit for street/sidewalk closing.	Yes	No	$500	Yes	$2,500	$1,250	$5,000	$2,500	$10,000	
BC 3303.4& 27-1018	Class 1	Failure to maintain adequate housekeeping per section requirements.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3303.4 & 27-1018	Class 2	Failure to maintain adequate housekeeping per section requirements.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3303.4.5& 27-1018	Class 1	Unsafe storage of materials during construction or demolition.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3303.4.6& 27-1018	Class 1	Unsafe storage of combustible material and equipment	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3304.3 &	Clas	Failure to notify the Department	No	No	$1,2	No	$6,0	$3,0	$12,	$6,0	$25,	

1 RCNY 52-01(a)	s 1	prior to the commencement of earthwork.			00		00	00	000	00	000			
BC 3304.3 & 1 RCNY 52-01(b)	Class 2	Failure to notify the Department prior to the cancellation of earthwork .	No	No	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
BC 3304.4 & 27-1032	Class 1	Failure to provide protection at sides of excavation.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000			
BC 3306 & 27-1039	Class 1	Failure to carry out demolition operations as required by section.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000			
BC 3306.2.1	Class 1	Failure to provide safety zone for demolition operations.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
BC 3306.3& 27-195	Class 1	Failure to provide required notification prior to the commencement of demolition.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000			
BC 3306.5	Class 1	Mechanical demolition without plans on site.	No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000			
BC 3307.3.1& 27-1021(a)	Class 1	Failure to provide sidewalk shed where required.	No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000			
BC 3307.3.1& 27-1021(a)	Class 2	Failure to provide sidewalk shed where required.	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000			
BC 3307.6 & 27-1021	Class 2	Sidewalk shed does not meet code specifications.	No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000			

[Table 12]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty
BC 3307.7 & 27-1021(c)	Class 2	Job site fence not constructed pursuant to subsection.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
BC 3309.4 & 27-1031	Class 1	Failure to protect adjoining structures during excavation operations.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000
BC	Clas	Failure to have Site Safety Man-	No	No	$2,4	Yes	$12,	$6,0	$24,	$12,	$25,

3310.5 & 27-1009(d)	s 1	ager or Coordinator present as required.			00		000	00	000	000	000	
BC 3310.8.2	Class 1	Site safety manager/coordinator failed to immediately notify the Department of conditions as required	No	No	$2,500	No	$12,500	$6,250	$25,000	$12,500	$25,000	
BC 3310.9.1	Class 1	No Concrete Safety manager present during all concrete operations as required.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.2 & 27-1042	Class 1	Erected or installed supported scaffold 40 feet or higher without a permit.	No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000	
BC 3314.1.1 & 27-1050.1	Class 2	Failed to notify Department prior to use/inst. off C-hooks/outrigger beams in connection with Suspended Scaffold	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	
BC 3314.4.3.1 & 27-1045	Class 1	Failure to perform safe/proper inspection of suspended scaffold.	No	No	$10,000	No	$25,000	$25,000	$25,000	$25,000	$25,000	
BC 3314.4.3.1 & 27-1045(b)	Class 1	No record of daily inspection of Suspended Scaffold performed by authorized person at site.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.4.4.5	Class 1	Erected, dismantled repaired, maintained, modified or removed supported scaffold without a scaffold certificate of completion.	No	No	$2,400	No	$12,000	$6,000	$24,000	$12,000	$25,000	
BC 3314.4.6	Class 1	Use of supported scaffold without a scaffold user certificate.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
BC 3314.6.3 & 27-1009	Class 1	Failure to provide/use lifeline while working on scaffold.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000	
BC 3314.6.3 & 27-1009	Class 2	Failure to provide/use lifeline while working on scaffold.	No	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000	

BC 3316.2 & BC 3319.1 & 27-1054	Class 1	Inadequate safety measures: Oper'n of crane/ derrick/hoisting equip in unsafe manner)		No	No	$4,800	No	$24,000	$12,000	$25,000	$24,000	$25,000			

[Table 13]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I DefaultPenalty	AggravatedII Penalty	Aggravated II DefaultMaximumPenalty				
BC 3319.3	Class 1	Operation of a crane/derrick without a Certificate of Operation			No	No	$1,000	No	$5,000	$2,500	$10,000	$5,000	$25,000		
BC 3319.3 & 27-1057 (b)	Class 2	Operation of crane/derrick without Certificate of Approval/Certificate of Operation.			No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000		
BC 3319.3 & 27-1057(d)	Class 2	Operation of a crane/derrick without a Certificate of Onsite Inspection.			No	No	$2,400	No	$10,000	$6,000	$10,000	$10,000	$10,000		
BC 3319.8	Class 1	Failure to provide erection, jumping, climbing, dismantling plan for tower/ climber crane.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.2	Class 1	Failure to conduct a safety coordination meeting.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.3	Class 1	Failure to conduct a pre-jump safety meeting.			No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000		
BC 3319.8.4	Class 1	Failure to notify the Department prior to pre-jump or safety coordination meeting.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		
BC 3319.8.4.2	Class 1	Failure to provide time schedule indicating erection, jumping, climbing or dismantling of crane.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		
BC 3319.8.6	Class 1	No meeting log available.			No	No	$1,200	No	$6,000	$3,000	$12,000	$6,000	$25,000		

BC 3319.8.7	Class 1	Failure to file a complete and acceptable tower/climber installation Report per BC 3319.8.7	No	No	$2,000	No	$10,000	$5,000	$20,000	$10,000	$25,000
BC 3319.8.8	Class 1	Erection, jumping, climbing, dismantling operations of a tower or climber crane not in accordance with 3319.8.8	No	No	$4,000	No	$20,000	$10,000	$25,000	$20,000	$25,000
PC-Misc, FGC-Misc, MC-Misc	Class 1	Miscellaneous violations.	No	No	$1,600	No	$8,000	$4,000	$16,000	$8,000	$25,000
PC-Misc, FGC-Misc, MC-Misc	Class 2	Miscellaneous violations.	Yes	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
PC-Misc, FGC-Misc, MC-Misc	Class 3	Miscellaneous violations.	Yes	Yes	$300	Yes	$500	$500	$500	$500	$500
RS 6-1	Class 1	Failure to file affidavits and/or comply with other requirements set forth for photoluminescent exit path marking.	No	No	$2,400	Yes	$12,000	$6,000	$24,000	$12,000	$25,000
ZR 42-543	Class 1	Outdoor Ad Co sign in M Dist exceeds height limit.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 22-00	Class 2	Illegal use in residential district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
ZR 22-00	Class 3	Illegal use in residential district	Yes	Yes	$300	No	$500	$500	$500	$500	$500
ZR 22-32	Class 1	Outdoor Ad Co has impermissible advertising sign in an R Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 22-342	Class 1	Outdoor Ad Co sign in R Dist exceeds height limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR 25-41	Class 2	Violation of parking regulations in a residential district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
ZR 25-41	Class 3	Violation of parking regulations in a residential district.	Yes	No	$300	Yes	$500	$500	$500	$500	$500

ZR 32-00	Class 2	Illegal use in a commercial district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR 32-63	Class 1	Outdoor Ad Co advertising sign not permitted in specified C Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 32-64	Class 2	Sign(s) in specified C Dist exceed(s) surface area restrictions.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			

[Table 14]:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default Maximum Penalty			
ZR 32-64	Class 1	Outdoor Ad Co sign(s) in specified C Dist exceed surface area limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 32-652	Class 2	Sign in specified C Dist extends beyond street line limitation.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
ZR 32-653	Class 2	Prohibited sign on awning, canopy, or marquee in C Dist.	No	Yes	$1,200	Yes	$6,000	$3,000	$10,000	$6,000	$10,000			
ZR 32-655	Class 1	Outdoor Ad Co sign exceeds permitted height for specified C Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 42-00	Class 2	Illegal use in a manufacturing district.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR 42-52	Class 1	Outdoor Ad Sign not permitted in M Dist.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR 42-53	Class 1	Outdoor Ad sign in M Dist exceeds surface area limits.	No	No	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000			
ZR-Misc	Class 2	Miscellaneous violations of the Zoning Resolution.	Yes	No	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000			
ZR-Mis	Class 3	Miscellaneous violations of the Zoning Resolution.	Yes	No	$300	Yes	$500	$500	$500	$500	$500			

c												
ZR-Misc.	Class 1	Misc sign violation under the Zoning Resolution by an Outdoor Ad Co	No	Yes	$10,000	Yes	$25,000	$25,000	$25,000	$25,000	$25,000
ZR-Misc.	Class 2	Misc sign violation under the Zoning Resolution	No	Yes	$800	Yes	$4,000	$2,000	$8,000	$4,000	$10,000
Misc Title 28/Misc ZR	Class 1	Misc outdoor sign violation of ZR and/or Building Code.	No	No	$10,000	No	$25,000	$25,000	$25,000	$25,000	$25,000
Misc Title 28/Misc ZR	Class 2	Misc outdoor sign violation of ZR and/or Building Code	No	No	$2,400	No	$10,000	$10,000	$10,000	$10,000	$10,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-103) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Buildings Penalty Schedule I designation added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Opening par added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Second undesignated par added City Record May 19, 2008 §1, eff. June 18, 2008. [See Note 6]

Table 26-118 amended City Record May 4, 2007 §12, eff. June 3, 2007. [See Note 3]

Table 26-126.1(e)(ii) so designated and amended City Record Jan. 28, 2008 §4, eff. Feb. 27, 2008. [See Note 5]

Table 26-126.1(f) added City Record Jan. 28, 2008 §2, eff. Feb. 27, 2008. [See Note 5]

Table 26-172 (two entries) added City Record Aug. 16, 2007 §1, eff. Sept. 15, 2007. [See Note 4]

Table 26-126.1(e)(i) amended City Record Jan. 28, 2008 §4, eff. Feb. 27, 2008. [See Note 5]

Table 26-178 added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See Note 4]

Table 26-179 added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See Note 4]

Table 26-181.1 added City Record Aug. 16, 2007 §3, eff. Sept. 15, 2007. [See Note 4]

Table 26-204.1(a) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(b) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(c) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 26-204.1(d) added City Record May 4, 2007 §3, eff. June 3, 2007. [See Note 3]

Table 27-118.1(a) as designated and amended (former 27-118.1) City Record Jan. 28, 2008 §3, eff. Feb. 27, 2008. [See Note 5]

Table 27-118.1(a) as designated and amended (former 27-118.1) City Record Jan. 28, 2008 §3, eff. Feb. 27, 2008. [See Note 5]

Table 27-118.1(b) added City Record Jan. 28, 2008 §1, eff. Feb. 27, 2008. [See Note 5]

Table 27-129 (Failure to submit a 6th . . . 1 RCNY 32-03) added City Record May 4, 2007 §2, eff. June 3, 2007. [See Note 3]

Table 27-147 (Demolition . . . HAZARDOUS) amended City Record May 4, 2007 §5, eff. June 3, 2007. [See Note 3]

Table 27-195 amended City Record May 4, 2007 §6, eff. June 3, 2007. [See Note 3]

Table 27-205 added City Record Nov. 1, 2007 §2, eff. Dec. 1, 2007. [See T48 §3-120 Note 1]

Table 1 RCNY 50-01(a)(5) added City Record Jan. 28, 2008 §5, eff. Feb. 27, 2008. [See Note 5]

Table 1 RCNY 50-01(a)(9) added City Record Jan. 28, 2008 §5, eff. Feb. 27, 2008. [See Note 5]

Table 1 RCNY 52-01(a) added City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 3]

Table 1 RCNY 52-01(b) added City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 3]

Table 27-228.5 (Failure to file an architect/engineer . . . equipment) added City Record May 4, 2007 §8, eff. June 3, 2007. [See Note 3]

Table 27-383(b)(3) (two entries) added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-383(b) added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-383.1 added City Record May 4, 2007 §9, eff. June 3, 2007. [See Note 3]

Table 27-384(c) added City Record May 4, 2007 §10, eff. June 3, 2007. [See Note 3]

Table 27-987 (2 entries) amended City Record May 4, 2007 §1, eff. June 3, 2007. [See Note 3]

Table 27-1042 (Erected, dismantled . . . HAZARDOUS) added City Record May 4, 2007 §4, eff. June 3, 2007. [See Note 3]

Table 27-1045 added City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 4]

Table 27-1045(b) added City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 4]

Table 27-1050.1 added City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 4]

Title 26 and 27 of the NYC Admin. Code (Miscellaneous Construction . . .) added City Record May 4, 2007 §11, eff. June 3, 2007. [See Note 3]

Table 26-262(d) added City Record Mar. 2, 2007 §1, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(a) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(b) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-260(c) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-261(a) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-261(b) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(1) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(1) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(2) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 26-262(a)(3) added City Record Mar. 2, 2007 §2, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-02 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-03 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-03 added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-12(e) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-12(e) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 1 RCNY §49-15(h) added City Record Mar. 2, 2007 §3, eff. Apr. 1, 2007. [See Note 2]

Table 27-147 (last four entries) added City Record Oct. 13, 2006 §4, eff. Nov. 12, 2006. [See Note 1]

Table 27-201 (last four entries) added City Record Oct. 13, 2006 §5, eff. Nov. 12, 2006. [See Note 1]

Table 27-214 (second entry) added City Record Oct. 13, 2006 §1, eff. Nov. 12, 2006. [See Note 1]

Table 27-215 (fourth entry) added City Record Oct. 13, 2006 §2, eff. Nov. 12, 2006. [See Note 1]

Table 27-217 (seventh entry) added City Record Oct. 13, 2006 §3, eff. Nov. 12, 2006. [See Note 1]

Table 27-217 (eighth entry) added City Record Oct. 13, 2006 §3, eff. Nov. 12, 2006. [See Note 1]

Table 27-981.2 line added City Record June 20, 2005 §15, eff. July 20, 2005. [See T48 §3-101 Note 1]

Buildings Penalty Schedule II added City Record May 19, 2008 §2, eff. June 18, 2008. [See Note 6]

Paragraph 4 subpar (2) clause (i) amended City Record Dec. 23, 2009 §1, eff. Jan. 22, 2010. [See Note 11]

Table 1 RCNY 49-03 added City Record Dec. 23, 2009 §6, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.1 amended City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.11 added City Record Apr. 2, 2009 §9, eff. May 2, 2009. [See Note 8]

Table 28-105.12.1 added City Record Dec. 23, 2009 §3, eff. Jan. 22, 2010. [See Note 11]

Table 28-105.12.2 added City Record Apr. 2, 2009 §3, eff. May 2, 2009. [See Note 7]

Table 28-110.1 added City Record Apr. 2, 2009 §10, eff. May 2, 2009. [See Note 8]

Table 28-110.1 added City Record Apr. 2, 2009 §10, eff. May 2, 2009. [See Note 8]

Table 28-201.1 added City Record Apr. 2, 2009 §11, eff. May 2, 2009. [See Note 8]

Table 28-202.1 amended City Record Apr. 2, 2009 §7, eff. May 2, 2009. [See Note 7]

Table 28-210.1 amended City Record Apr. 2, 2009 §6, eff. May 2, 2009. [See Note 7]

Table 28-211.1 (last entry) added City Record Apr. 2, 2009 §12, eff. May 2, 2009. [See Note 8]

Table 28-216.12.1 (Failure . . . buildings.) added City Record July 2, 2009 §1, eff. Aug. 1, 2009. [See Note 10]

Table 28-216.12.6 (Failure . . . compromised.) added City Record July 2, 2009 §1, eff. Aug. 1, 2009. [See Note 10]

Table 28-301.1 (Failure . . . & 27-366) added City Record Apr. 2, 2009 §13, eff. May 2, 2009. [See Note 8]

Table 28-301.1 (Failure . . . MC 401.5.2) added City Record Apr. 2, 2009 §14, eff. May 2, 2009. [See Note 8]

Table 28-305.4.4 (Failure . . . wall) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-305.4.6 (Failure . . . wall) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-305.4.7.3 (Failure . . . conditions) added City Record July 2, 2009 §2, eff. Aug. 1, 2009. [See Note 10]

Table 28-405.1 (Supervision . . . license) repealed City Record Apr. 2, 2009 §15, eff. May 2, 2009. [See Note 8]

Table 28-408.1 amended City Record Apr. 2, 2009 §16, eff. May 2, 2009. [See Note 8]

Table 28-415.1 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2.1 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.2.2 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table 28-502.5 added City Record Dec. 23, 2009 §4, eff. Jan. 22, 2010. [See Note 11]

Table Misc. Title 28/Misc ZR Class 1 & 2 added City Record Dec. 23, 2009 §5, eff. Jan. 22, 2010. [See Note 11]

Table Misc. Chapter 4 . . . Activity added City Record Apr. 2, 2009 §17, eff. May 2, 2009. [See Note 8]

Table BC 1016.2 amended City Record Apr. 2, 2009 §4, eff. May 2, 2009. [See Note 7]

Table BC 3010.1 & 27-1006 amended City Record Apr. 2, 2009 §5, eff. May 2, 2009. [See Note 7]

Table BC 3301.8 added City Record Apr. 2, 2009 §1, eff. May 2, 2009. [See Note 7]

Table BC 3303.4 & 27-1018 added City Record Apr. 2, 2009 §1, eff. May 2, 2009. [See Note 8]

Table BC 3303.4.5 & 27-1018 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 8]

Table BC 3303.4.6 & 27-1018 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 8]

Table BC 3307.3.1 & 27-1021(a) (second entry) added City Record Apr. 2, 2009 §3, eff. May 2, 2009. [See Note 8]

Table BC 3310.8.2 added City Record Apr. 2, 2009 §2, eff. May 2, 2009. [See Note 7]

Table BC 3310.9.1 added City Record Apr. 2, 2009 §4, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.6 amended City Record Apr. 2, 2009 §5, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.5 amended City Record Apr. 2, 2009 §7, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.5 & 26-204.1(a) repealed City Record Apr. 2, 2009 §8, eff. May 2, 2009. [See Note 8]

Table BC 3314.4.6 & 26-204.1(c) repealed City Record Apr. 2, 2009 §6, eff. May 2, 2009. [See Note 8]

Table BC 3319.8 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.2 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.3 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.4 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.4.2 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.6 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.7 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table BC 3319.8.8 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 9]

Table ZR 22-00 (class 3) added City Record Apr. 2, 2009 §18, eff. May 2, 2009. [See Note 8]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 13, 2006:

The Environmental Control Board (ECB) had a Public Hearing on June 22, 2006 on its proposed revisions of its Penalty Schedules and its Appeals rules. The Board carefully considered the testimony, written comments and material received at and after the June 22, 2006 Public Hearing and has adopted the following revisions to the ECB Penalty Schedules and ECB Appeals rules: (1) the addition of twelve new charges with enhanced penalties for violations within manufacturing districts to the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York; (2) the addition of three new charges and the revision of three existing charges to the Department of Sanitation's Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules

of the City of New York as a result of the enactment of Local Law 108 of 2005 which amends §16-118(2) of the Administrative Code of the City of New York; (3) the addition of a new charge to the Public Safety Graffiti Penalty Schedule found in §3-119 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York pursuant to the enactment of Local Law 111 of 2005 which adds a new §10-117.3, to the Administrative Code of the City of New York; and (4) revisions to clarify ECB Appeals rules found in §§3-71(a), 3-72(a)(b), and 3-73(a)(b) of Subchapter D of Chapter 3 of Title 48 of the Rules of the City of New York.

The Board adopted the twelve new charges with enhanced penalties for certain Building Code violations within a manufacturing district based upon the following: (1) to deter the illegal conversion of industrial properties to residential use as the existing penalties do not adequately or equitably penalize property owners for the destruction of industrial space; (2) to ensure compliance and deter repeated violations because property owners have been absorbing the existing penalties as a cost of doing business to generate the higher profits offered by residential conversion; and (3) the enhanced penalties are necessary to offset the high rents that these illegally converted residential units command.

The new charges with enhanced penalties include: (a) occupancy of a new building in a manufacturing district without a valid certificate of occupancy; (b) occupancy of a building altered for residential use in a manufacturing district without a valid certificate of occupancy; (c) occupancy of a building in a manufacturing district inconsistent with the certificate of occupancy or Department of Buildings records; (d) performing construction or alteration work for residential use in a manufacturing district without a permit; (e) performing plumbing work for residential use in a manufacturing district without a permit; (f) performing plumbing work for residential use in a manufacturing district contrary to approved applications and plans; and (g) performing construction work for residential use in a manufacturing district contrary to approved applications and plans.

The Board revised and added three new charges to the Department of Sanitation's Penalty Schedule pursuant to the enactment of Local Law No. 108 of 2005 which amends §16-118(2) of the Administrative Code of the City of New York in relation to the responsibility of an owner, lessee, tenant or person in charge of a vacant lot to maintain such lot and adjacent areas. The law as amended provides that all vacant lot owners, lessees, tenants or persons in charge of vacant lots are now responsible for ensuring that the entire lot is kept free from garbage, refuse, rubbish, litter, debris and other offensive material. The law as amended re-designates the existing text of subdivision (2) as paragraph (a) of such subdivision and a new paragraph (b) is added to subdivision (2) to incorporate the vacant lots and the areas fronting vacant lots to the list of property areas that are required to be kept clean, including one and one-half feet from curb into the street.

The Board revised and added a new charge to the Public Safety Graffiti Penalty Schedule pursuant to the enactment of Local Law No. 111 of 2005, which adds a new §10-117.3, to the Administrative Code of the City of New York in relation to the removal of graffiti from commercial buildings and from residential buildings containing six dwelling units or more and in relation to establishing a process whereby the City may clean graffiti from these buildings. Owners, upon notice will have sixty days to remove the graffiti before any hearing is held and a civil penalty is imposed. The purpose of the new graffiti law and penalties coupled with granting the City the ability to clean graffiti in public view from commercial and residential buildings is to rid the City's communities of graffiti and improve the quality of life in the City.

The Board adopted the revisions to the ECB Appeals rules that are found in §§3-71(a), 3-72(a)(b), and 3-73(a)(b) of Subchapter D of Chapter 3 of Title 48 of the Rules of the City of New York for the following reasons: 1) the revision to 15 RCNY 31-71(a) clarifies that the filing of proof of service must be made within the same 30 day period that is required to file exceptions; 2) the revision to 15 RCNY 31-72(a) clarifies that a request for a copy of an audio tape extends the time to appeal just as does a request for a transcript and clarifies that applications for extension of time to appeal must be served on all parties and proof of such service must be filed with the tribunal. This would make the service requirements for extension requests identical to the service requirements for the exceptions themselves. The revision also conforms 15 RCNY 31-72(b), which governs applications for extension of time to file an appeal for any reason other than a request for a transcript or audiotape, to these same service and filing requirements; and 4) the

revision to 15 RCNY 31-73(a)(b) clarifies that as a pre-requisite to appeal, any civil penalties imposed by the hearing officer must be paid by a date certain, and sets a clearly identifiable date by which payment must be made.

2. Statement of Basis and Purpose in City Record Mar. 2, 2007: The Environmental Control Board (ECB) had a Public Hearing on January 31, 2007, on its proposed revisions of its Penalty Schedules. The Board carefully considered the testimony, written comments and material received before and at the January 31, 2007, Public Hearing and has adopted the following revisions to the ECB Penalty Schedules: (1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add sixteen new charges for violations of the Building Code and the Rules of the City of New York regulating the registration of Outdoor Advertising Companies (OACs) and outdoor signs. These charges are being added to the Buildings Penalty Schedule to address outdoor advertising violations of the New York City Administrative Code and the Rules of the City of New York (RCNY), which are in addition to the charges for outdoor-sign related violations that are already included in the Buildings Penalty Schedule. The new charges for violations of Title 1 of the RCNY, §§49-02, 49-03, 49-12(e), and 49-15(h) are being added to the Buildings Penalty Schedule in light of the promulgation of Chapter 49 of Title 1 of the RCNY, which became effective on August 25, 2006. The new charges for violations of the Administrative Code charges are added in response to the enactment of Local Law 14/2001, as amended by Local Law 31/2005, which pertains to outdoor signage. The City Council enacted Local Law 14 and Local Law 31 to reduce the proliferation of illegal signage and better regulate existing and new legal signs. These local laws created the foundation for a new regulatory scheme that requires the registration of all OACs doing business within the City of New York, and their sign locations within nine-hundred feet and within view of an arterial highway, and within two-hundred feet and within view of a public park of one-half acre or more. The City Council determined that visual clutter had significantly increased in these areas, causing unsightly, and in some cases, unsafe conditions. Chapter 49 of Title 1 of the RCNY sets forth the procedures by which Local Law 14 and Local Law 31 will be implemented, such as the registration and permitting process, fees, deadlines, penalties and enforcement procedures for non-compliance. The City Council, in enacting these local laws, established a higher penalty scale for violations by OACs, to deter new illegal signage and to combat existing illegal signage, in light of the tremendous revenue generated by advertising signs. The previous enforcement penalties applicable to OACs were considered a mere cost of doing business to many OACs. These new charges and penalties will help deter violations of the outdoor sign-related laws. The new charges include the following: (a) Maintaining sign/structure controlled by unregistered OAC; (b) OAC engages in outdoor advertising business without valid registration; (c) OAC fails to submit information prescribed by Department; (d) OAC fails to post bond or provide other form of security; (e) OAC fails to submit accurate sign inventory information; (f) OAC fails to display required information on sign/sign location; (g) OAC sign violates Zoning Resolution (ZR), Administrative Code (AC) or Department of Buildings (DOB) rule; (h) OAC makes available sign which is in violation of the ZR, AC, or DOB rules; (i) OAC makes available sign or registration to unregistered OAC; (j) OAC fails to cooperate with DOB sign-related investigation; (k) OAC fails to comply with commissioner's sign-related order; (l) OAC fails to notify DOB of material change in registration information; (m) Affiliated OAC does business before notice of material change is received; and (n) OAC fails to amend sign inventory information as prescribed by DOB rule. (2) The Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add six charges pertaining to the use of ultra low sulfur diesel fuel and best available technology in nonroad vehicles. The charges are added in response to the enactment of Local Law 77/2003, which can be found in the Air Pollution Control Code as §24-163.3. The purpose of this section is to limit emissions from nonroad vehicles, such as backhoes, bulldozers, excavators, and cranes. The statute requires that any diesel-powered nonroad vehicle with an engine fifty or more horsepower must be (a) powered by ultra-low sulfur diesel fuel and (b) utilize best available technology for emission reduction. The law applies to all vehicles owned by, operated by or on behalf of, or leased by a City agency. Some of the new charges have aggravated penalties for excess profit, consistent with the penalty provisions set forth in subdivisions (n) and (o) of §24-163.3. (3) The Board has revised the Air Asbestos Code Penalty Schedule found in §3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend the description in that Penalty Schedule of the three charges for New York State Industrial Code Rule 56. The New York City Department of Environmental Protection (DEP) has authority to enforce Industrial Code Rule 56 (ICR 56) pursuant to a prior delegation by the New York State Department of Labor (NYSDOL). Effective on September 5, 2006, the NYSDOL has

promulgated extensive revisions to ICR 56, including the addition of new sections and the amendment and renumbering of previously existing sections. Accordingly, the Board has revised the current Penalty Schedule entries for ICR 56 to take into account the new revisions to ICR 56. As was the case with the current description of the charges for ICR 56 violations, the various charges as revised have been assigned to severity level 1, 2 or 3 based on the danger to health and safety of workers and to the public posed by each infraction. As with the other penalties in the Air Asbestos Code Penalty Schedule, the penalties for charges of violations of ICR 56 are designed to act as a deterrent so that contractors in the asbestos-abatement industry, which is a high-profit industry, will not regard violations merely as a cost of doing business. In the revised charges implemented by this rule, a list of the specific section numbers included within ICR 56 that correspond to the different severity levels has been added to each charge description. (4) The Board has revised the Public Pay Telephones Penalty Schedule found in §3-118 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include a new charge and to remove a charge. The new charge, for a violation of 67 RCNY 6-05(d), is added to reflect the amendment of Title 67 of the Rules of the City of New York relating to the management of public pay telephones. This amendment became effective on March 14, 2006. The amendment establishes a new provision, §6-05(d), which mandates that public pay telephone operators fully correct any public pay telephone that is in a broken, cracked, fractured, displaced, or like condition, within a seventy-two hour period. The subsection was promulgated to compel public pay telephone operators to act promptly when a public pay telephone is damaged such that the condition of the public pay telephone may cause, or result in, physical injury to the public. Accordingly, a new charge that correlates with this new provision of Title 67 is added by this rule to the Public Pay Telephones Penalty Schedule. The penalty is commensurate with the serious nature of a violation of §6-05(d), which specifically seeks to protect the public from unsafe conditions on public pay telephones. The charge that is being removed from the Penalty Schedule is for 67 RCNY 6-05(d)(3). This charge is being removed from the Penalty Schedule because there is no paragraph (3) of subdivision (d) of §6-05 in Title 67 of the RCNY, and because the substance of the charge is subsumed by a different entry in the Penalty Schedule, namely the entry for 67 RCNY 6-05(c). (5) The Board has amended the list of subchapters that precedes the ECB Rules, which are found in Chapter 3 of Title 48 of the Rules of the City of New York. Specifically, the Board is adding to this list a reference to Subchapter G, "Penalties". Subchapter G is already included in the ECB Rules that are found in Chapter 3 of Title 48 of the Rules of the City of New York. (6) The Board has amended the Department of Parks and Recreation Rules Penalty Schedule found in §3-116 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the section of law set forth in the "Section/Rule" column of that Penalty Schedule that currently reads "56 RCNY 1-04(b)(1)(ii)," for "Major damage to/accidental destruction of a tree" to instead read "56 RCNY 1-04(b)(1)(i)." The reason for this change is that subparagraph (i) specifically pertains to damage to trees, whereas subparagraph (ii) is more general, pertaining to damage to "plants, flowers, shrubs or other vegetation." Because the charge in question, "Major damage to/accidental destruction of a tree," specifically relates to trees, it is appropriate that the citation be to subparagraph (i), since that subparagraph specifically pertains to trees.

3. Statement of Basis and Purpose in City Record May 4, 2007: The Environmental Control Board (ECB) had a Public Hearing on April 12, 2007, on its proposed revisions of its Penalty Schedules. The Board carefully considered the testimony at the April 12, 2007, Public Hearing (the only testimony presented at that hearing addressed §27-383) as well as the written comment received in connection with that hearing and has adopted the following revisions to the ECB Penalty Schedules: 1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for New York City Administrative Code §27-987, "Failure to maintain elevator," and for New York City Administrative Code §27-987 "Failure to maintain elevator-HAZARDOUS." These penalty amounts are being changed to impose higher penalties on those offenders who repeatedly violate this section of law. These higher penalties are designed to provide a deterrent to chronic elevator maintenance violations, thereby increasing compliance with elevator maintenance standards. These penalties are within the statutory minimum and maximum penalties prescribed by the New York City Administrative Code. 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add a new charge of a violation of §27-129 of the New York City Administrative Code. The charge is for "Failure to submit a sixth-round Technical Report: Periodic Inspection of Exterior wall and appurtenances as required by 1 RCNY 32-03." This new charge will be used to cite buildings owners

who fail to file a sixth-round architect's or engineer's technical report with the Department of Buildings. Such a report certifies the results of an examination of the premises' exterior walls and the appurtenances thereof. The report is required for buildings greater than six stories in height. The Buildings Penalty Schedule already includes charges of failure to submit second-round through fifth-round technical reports. This new charge is required because the sixth-round filing period began on February 21, 2005. This new charge is essentially identical to the existing charges except insofar as it pertains to the sixth-round technical report. 3) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add five new charges. The new charges are added in response to the enactment of Local Law Number 52 of 2005. This Local Law was enacted on May 19, 2005, and took effect on November 19, 2006. This law requires User Certificates and Certificate of Completion for supported scaffoldings at construction sites, as per §26-204.1 through §26-204.5 of the New York City Administrative Code. The law also requires a permit in connection with the erection, dismantling, repairing, maintaining or modifying a supported scaffold that is 40 feet high or more in height, pursuant to §27-1042 of the New York City Administrative Code. Enforcement of these new provisions will help to protect citizens from careless construction of supported scaffolds and the dangers associated with working on these scaffolds on construction sites. The five new charges include the following: (i) Erected, dismantled, repaired, maintained or modified supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to §26-204.3-HAZARDOUS; (ii) Knowingly permitted individual to erect, dismantle, repair, maintain or modify supported scaffold without a Supported Scaffold Certificate of Completion issued pursuant to §26-204.3-HAZARDOUS; (iii) Use of permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to §26-204.4; (iv) Knowingly allowed individual(s) to use permitted supported scaffold without a Supported Scaffold User Certificate issued pursuant to §26-204.4-HAZARDOUS; (v) Erected, dismantled, repaired, maintained or modified supported scaffold 40 feet or higher without a permit pursuant to §27-1042-HAZARDOUS. 4) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §27-147, "Demolition Work Without Required Demolition Permit." These penalty amounts are being changed to impose higher penalties because demolition work is inherently dangerous and requires close scrutiny, monitoring and supervision. This increase in penalties will help convey the seriousness of this charge, and thereby promote the safety of adjacent properties, property owners and workers at construction sites. This increase in penalties is also in keeping with recent legislation of the City Council, Intro. 132-A of 2006, which became effective on December 5, 2006, which mandated higher criminal penalties for demolition work without a permit on one-family or two-family dwellings. Regarding this charge, as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being adding to the charge description for further clarification of this fact. 5) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §27-195, "Failure to notify the DOB prior to the commencement of demolition work." These penalty amounts are being changed to impose higher penalties because demolition work is inherently dangerous and requires close monitoring and supervision. The notification requirement prior to the commencement of demolition is intended to enable the Department of Buildings to investigate whether demolition work is being performed according to accepted safety standards. Because demolition is inherently dangerous, the proposed increase in penalties will help promote safety during demolition, including the safety of adjacent properties, property owners, and workers at construction sites. Regarding this charge as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being added to the charge description for further clarification of this fact. 6) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges to enforce the provisions of §52-01(a) and (b) of Title 1 of the Rules of the City of New York. Section 52-01 was promulgated pursuant to §27-195 of the New York City Administrative Code and became effective on October 25, 2006. This Rule requires holders of earthwork permits to give notice to the Department of Buildings at least 24 hours, but not more than 48 hours, prior to the commencement of earthwork. It also requires that, in the event that earthwork is cancelled, a permit holder must notify the Department of Buildings of the cancellation not more than 24 hours prior to, but no later than the date for which the earthwork was scheduled. The rule is intended to enable the Department of Buildings to investigate whether the work is being performed according to accepted safety standards. Because earthwork is inherently dangerous, these new charges, and

the associated penalties, will help promote safety during earthwork, including the safety of adjacent properties, property owners, and workers at construction sites. 7) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add six new charges to enforce the provisions of Local Law 26 of 2004 which amends the Buildings and Fire Prevention Codes and requires owners of certain buildings to comply with new photoluminescent exit path markings (technical standards as set forth by RS 6-1), emergency power connection standards for exit and directional signs, and additional signs where the path of egress is not clear. It should be noted that the new charges for §§27-228.5, 27-383.1 and 27-384(c), set forth in §§8, 9 and 10 of this Final Rule, will not become effective until July 1, 2007. This is because July 1, 2007, is the compliance date specified for these charges, as is set forth in those sections of law, in Local Law 26 of 2004. This Local Law was adopted following the events of September 11, 2001, to aid in evacuation from buildings in the event of failure of both the power and back-up power connected to the lighting and illuminated exit/directional signs. These new requirements are critical to improvement of mass evacuations in affected buildings during emergencies or other extreme conditions. They are in addition to, or modification of existing signage and power requirements under the Building Code. 8) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge to enforce miscellaneous hazardous construction violations of the New York City Building Code. Currently a miscellaneous charge exists for non-hazardous construction violations. Inspectors presently are compelled to use this miscellaneous charge even when the miscellaneous violation is deemed hazardous, resulting in penalties that are not commensurate with a hazardous designation. This new charge, with its enhanced penalties, will allow for a more effective enforcement of the Building Code. 9) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts for Administrative Code §26-118, "Failure to comply with a Stop Work Order." Stop Work Orders are issued by the Department of Buildings when a Department of Buildings Inspector determines that building work is being executed in a dangerous or unsafe manner and in violation of a provision of any law, rule or regulation enforceable by the Department of Buildings. The continuance of such work may pose an imminent hazard and jeopardize public safety. The penalty amounts for this charge are being changed to impose higher penalties in order to discourage dangerous and unsafe work. These higher penalties are in keeping with recent legislation within the City Council (specifically, Intro. 216-A of 2006, which became effective on December 5, 2006), mandating higher penalties payable to the Department of Buildings before a Stop Work Order may be lifted. In addition, the new Local Law mandates new criminal fines for violating a Stop Work Order. The ECB penalties are in addition to these new mandated penalties, and are being increased in recognition of the serious nature of such violation. Regarding this charge, as to which the penalties are being increased, it should be noted that this was already a hazardous offense, but the word "HAZARDOUS" is now being added to the charge description for further clarification of this fact.

4. Statement of Basis and Purpose in City Record Aug. 16, 2007: The Environmental Control Board (ECB) had a Public Hearing on July 19, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB Buildings Penalty Schedules. 1) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the penalty amounts and violation descriptions for two charges of violations of §26-172, namely, 26-172, "Supervision/use of rigging equipment without a master rigger's license," and §26-172, "Supervision/use of rigging equipment without a special rigger's license." The descriptions for those two charges have been revised to add the word "HAZARDOUS" to the descriptions. Regarding these charges, as to which the penalties are being increased, it should be noted that these were already hazardous offenses, but the word "HAZARDOUS" has now been added to the violation descriptions for further clarification of this fact. These new higher penalties are mandated by Administrative Code §26-181.1, which was enacted pursuant to Local Law 18 of 2007, effective on July 16, 2007. It should be noted that these higher penalties are set as flat penalties by §26-181.1. However, solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges relating to bond requirements and workers' compensation requirements relating to riggers licenses. Specifically, one of these two new charges is for

violations of Administrative Code §26-178, "Failed to obtain or maintain a bond and/or insurance as required-HAZARDOUS." The other of the two new charges is for violations of Administrative Code §26-179, "Failed to obtain and/or maintain workers' comp. ins. as required by law-HAZARDOUS." These two new charges have been added in light of the enactment of Administrative Code §26-181.1, which was enacted pursuant to Local Law 18 of 2007, effective July 16, 2007, which sets new flat penalties for violations of these two Sections of the Administrative Code. The penalties for this part of subdivision (b) of §27-1045, as set forth in this proposed rule, reflect the new flat penalties for these charges as established by that local law. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 3) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge for §26-181.1 of the Administrative Code, "Lic. Rigger failed to ensure Susp. Scaff. workers have valid Cert. of Fitness on site-HAZARDOUS." This new charge for violations of §26-181.1 has been added in response to the enactment of Local Law Number 18 of 2007, effective July 16, 2007, which added §26-181.1 to Chapter 1 of Title 26 of the Administrative Code. That Local Law also sets flat penalties for violations of §26-181.1. The penalties for this part of subdivision (b) of §27-1045, as set forth in this proposed rule, reflect the new flat penalties for this charge. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. 4) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges relating to Administrative Code §27-1045. One of the two new charges is for violation of one part of subdivision (b) of Administrative Code §27-1045, namely, the new charge: "No record of daily insp. of Susp. Scaff. performed by authorized person at site-HAZARDOUS." This new charge has been added in response to the enactment of Local Law Number 16 of 2007, and Local Law Number 18 of 2007, both effective July 16, 2007. Local Law 16 of 2007 amended subdivision (b) of Administrative Code §27-1045 to require that a record of daily inspections of suspended scaffolds be kept at the job site and be readily available upon request. Local Law 18 of 2007 set new, flat penalties for violations of this part of subdivision (b) of §27-1045. The penalties set forth in this proposed rule for this part of subdivision (b) of §27-1045 reflect the new flat penalties for this charge. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The other of the two new charges is for violation of the remaining provisions of §27-1045, namely, the new charge "Failed to perform safe/proper ins./install./maint./operation of Susp. Scaff.-HAZARDOUS." This new charge for violations of those provisions of §27-1045 has been added in recognition of the need to increase safety in the use of suspended scaffolds and related rigging equipment. The penalties for this charge will ensure greater accountability on the part of licensed rigging personnel in managing construction sites and worker safety. These penalties are within the minimum and maximum penalties allowed for such charges by Administrative Code §26-126.1. 5) The Board has revised the Buildings Penalty Schedule set forth in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge for §27-1050.1 of the Administrative Code, "Failed to notify Dept. prior to use/inst. of C-hooks/outrigger beams in connection with Susp. Scaff.-HAZARDOUS." This new charge has been added in response to the enactment of Local Law Number 17 of 2007, effective July 16, 2007, which added §27-1050.1 to Chapter 1 of Title 27 of the Administrative Code. That Local Law also sets flat penalties for violation of §27-1050.1, which are reflected in the penalties for violation of §27-1050.1 set forth in this proposed rule. Solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

5. Statement of Basis and Purpose in City Record Jan. 28, 2008: The Environmental Control Board (ECB) had a Public Hearing on January 10, 2008, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add a charge for a new section of law, namely, Administrative Code §27-118.1(b), which relates to illegal conversions of industrial and manufacturing occupancies to residential use, and to

add an associated daily penalty provision under Administrative Code §26-126.1(f). This new material is being added to the Buildings Penalty Schedule in light of the enactment of Local Law 37 of 2007, which became effective on November 1, 2007, to enforce the provisions of that Local Law. That Local Law, inter alia, added §27-118.1(b) and a new daily civil penalty provision under 26-126.1(f). 2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend the current entries in that Penalty Schedule for Administrative Code §27-118.1. Specifically, the Board has revised the descriptions of the two current entries for §27-118.1-one entry for first and second offenses, and the other entry for third offenses-in order to add a citation to subdivision (a). These revisions were made in response to the enactment of Local Law 37 of 2007. In addition, the Board has revised the charge descriptions for those two current entries, for clarity, by adding the word "HAZARDOUS" to the two charge descriptions. Those charges were already hazardous offenses, but the word "HAZARDOUS" has been added to the charge descriptions for further clarification. Similarly, the Board has revised the two current entries in the Buildings Penalty Schedule for Administrative Code §26-126.1(e)(i)-one entry for first and second offenses, and the other entry for third offenses-in order to clarify the charge descriptions. These clarifications include adding the word "HAZARDOUS" to the two charge descriptions. Those charges were already hazardous offenses, but the word "HAZARDOUS" has been added to the charge descriptions for further clarification. In addition, the Board has corrected one of the current entries for §26-126.1(e)(i)-the entry for third offenses-to read §26-126.1(e)(ii). 3) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges, for violations of §1 RCNY 50-01(a)(5) and 1 RCNY 50-01(a)(9). These two new charges are being added to implement the addition, effective on December 3, 2007, of a new Chapter 50 to Title 1 of the Rules of the City of New York, entitled "Distributed Energy Resource Standards". The new Chapter 50 was promulgated to provide installation standards for microturbines in New York City buildings. These microturbine systems increase low pressure natural gas (of between 2 and 3 pounds per square inch) to a high pressure (of over 60 pounds per square inch) to drive a turbine which results in the generation of electricity. The Rule was enacted in order to regulate these microturbine systems. The two new charges have been added to the Buildings Penalty Schedule to enforce the provisions of 1 RCNY §50-01, which is included within the new Chapter 50. Section 50-01 regulates the installation of High-Pressure Gas-Fired Microturbine systems. 4) The Board has revised the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York in order to make certain numbering changes relating to the charges for violation of 16 RCNY 1-08(h)(3), "Non-recyclables left in recycling container for Collection," and 16 RCNY 1-08(h)(4), "Recyclables placed for collection with non-recyclables." These changes were made to reflect the fact that those subdivisions of §1-08 of Title 16 of the Rules of the City of New York were renumbered by the Department of Sanitation, effective June 14, 2007.

6. Statement of Basis and Purpose in City Record May 19, 2008: The Environmental Control Board (ECB) held a Public Hearing on April 14, 2008, on proposed revisions of its Penalty Schedules. This Public Hearing was held jointly with the Department of Buildings, which presented its proposed rules implementing the new Building Code. The Board carefully considered the oral and written comments from the public submitted at the April 14, 2008 Public Hearing with regard to the proposed revisions of its Penalty Schedules. After evaluating the various points presented, the Board determined that no substantive revision to the proposed rule was warranted. 1) The Board has revised the "Buildings Penalty Schedule" found in Section 31-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an additional Buildings Penalty Schedule (designated as "Buildings Penalty Schedule II") to reflect the enactment of new Construction Codes, and the simultaneous repeal of substantial portions of the current Buildings Code. Buildings Penalty Schedule II will apply to all ECB Notices of Violation issued by the Department of Buildings with a date of occurrence on or after July 1, 2008. The existing Penalty Schedule (designated as "Buildings Penalty Schedule I") will be retained and will apply to all Notices of Violation issued by the Department of Buildings with a date of occurrence on or before June 30, 2008. The new Construction Codes were enacted pursuant to the provisions of Local Law 33 of 2007 and Local Law 99 of 2005. Local Law 33 of 2007 sets forth administrative, enforcement and technical provisions for the City's new Construction Codes. It has revised and thus complements Local Law 99 of 2005, which enacted administrative provisions of a new Title 28 of the NYC Administrative Code, as well as a new plumbing code. Local Law 33 repealed all of Chapter 1 of Title 26 of the NYC Administrative Code, and many of the provisions

of Title 27 of the NYC Administrative Code, effective July 1, 2008. In view of the enactment of the new Construction Codes, the Board has implemented Buildings Penalty Schedules I and II to reflect the changes in the law. On July 1, 2007, the new Construction Codes will become effective in New York City. The enactment of the new Construction Codes provides for improved building safety, enhanced enforcement tools, opportunities for construction cost savings, and incentives for innovative and sustainable building in New York City. The new Construction Codes consist of the New York City Plumbing Code (PC), the New York City Building Code (BC), the New York City Mechanical Code (MC) and the New York City Fuel Gas Code (FGC). In Title 28 of the NYC Administrative Code are found the administration and enforcement provisions that are applicable to both the new Construction Codes, and to the continuing provisions of the pre-existing Building Code. Those provisions of title 27 that continue to be in effect (primarily for existing buildings) have now been retitled the "1968 Building Code." The new Construction Codes will apply prospectively to all new construction, with some exceptions. For example, for a period of one year after the effective date, owners may elect to use the technical requirements of the 1968 building code, rather than the technical requirements of the new Construction Codes, for new buildings and for applications for alteration of existing buildings. In addition, after that one-year period, alterations of existing buildings will in some circumstances, at the option of the owner, be permitted to comply with the 1968 Building Code. Even if an existing building (or in some cases, a new or altered building) continues to be governed by the provisions of the 1968 Building Code, rather than by the provisions of the new Construction Codes, the **enforcement** provisions of Title 28 of the NYC Administrative Code will nonetheless apply in connection with those buildings. Title 28 includes, among other provisions, the various penalty structure requirements for violations of these codes. Accordingly, even in connection with the continuing provisions of the 1968 Buildings Code, Buildings Penalty Schedule II will apply in connection with ECB Notices of Violations issued on or after July 1, 2008. Buildings Penalty Schedule II includes charges from Title 28; the new Construction Codes; the Rules of the Department of Buildings; the Zoning Resolution; and charges that reflect the various continuing provisions of the 1968 Building Code. The penalties in Buildings Penalty Schedule II are based on the penalty provision requirements of Title 28. The Department of Buildings, pursuant to Chapter 2 of Title 28, will also promulgate Rules in order to implement the provisions of Title 28 and the new Construction Codes. The Department of Buildings rules will include the same charge descriptions and classification levels as are included in Buildings Penalty Schedule II, although without including the penalties themselves. The reason for this replication in DOB's Rule of these portions of Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a rule the classification level for every charge. Specifically, as mandated by Section 28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). These classifications are based on "the effect of the violation on life, health, safety or the public interest or the necessity for economic disincentive." The classification level assigned to a particular charge determines the applicable statutory penalty range, as well as compliance requirements. The Rule proposed by the Department of Buildings indicates that these classifications of "lesser," "major," and "immediately hazardous" shall be denominated as Class 1, Class 2, and Class 3, respectively. Therefore, Buildings Penalty Schedule II reflects this terminology. Buildings Penalty Schedule II allows respondents the opportunity to "cure" and so to obtain a zero penalty in connection with all violations classified as Class 3 violations, as well as in connection with some violations classified as Class 2 violations, if an acceptable Certificate of Correction is filed in a timely manner with the Department of Buildings in accordance with its Rules. This provision for cures is based upon the provisions of Section 28-204.2 of the NYC Administrative Code, which provides that no civil penalty shall be imposed for violations that are classified as Lesser (Class 3) violations if those violations are corrected and an acceptable Certificate of Correction is timely filed, within thirty days, with the Department of Buildings. Section 28-204.2 further provides that such a violation later may serve as a predicate for purposes of assessing aggravating factors attributable to multiple offenses. In addition to reflecting these statutorily-mandated requirements, the Buildings Penalty Schedule II provides additional time for correction in connection with cures, in that cures are permitted within forty days, rather than the statutorily-mandated thirty days, in order to allow for practical processing-time considerations. Additionally, the Buildings Penalty Schedule II allows for such cures, with a zero penalty, in connection with certain violations that are classified as Class 2, as well as in connection with violations that are classified as Class 3. The zero penalty is consistent with the statutory range set out for Major (Class 2) violations that is set forth in Section 28-202.1. Buildings Penalty Schedule II also reflects the fact that in some cases, the Department of Buildings may offer a stipulation to a respondent in connection with certain

types of charges. Stipulation offers are made by the Department of Buildings consistent with its Rules, found in Title 1 of the Rules of the City of New York. Buildings Penalty Schedule II indicates which violations are potentially eligible for such a stipulation offer. Regarding charges that pertain to Certificates of Occupancy issued by the Department of Buildings, Section 28-201.2.1 provides that violations for "occupancy without a required certificate of occupancy" shall be classified as an "immediately hazardous" (Class 1) violation. The Department of Buildings interprets that provision to mean that a violation for occupancy without a required Certificate of Occupancy is an "immediately hazardous" (Class 1) violation **only** in cases involving a new building that has never had a Certificate of Occupancy. In all other cases, a violation for occupancy contrary to the Certificate of Occupancy may be written as an "immediately hazardous" (Class 1), "major" (Class 2), or "lesser" (Class 3) violation.

7. Statement of Basis and Purpose in City Record Apr. 2, 2009: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Buildings Penalty Schedule II. Neither written material nor testimony was presented at the Public Hearing on the Proposed revisions to the ECB's Penalty Schedules as set forth above. 1) The Environmental Control Board has added two new charges to Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce the notification provisions of the New York City Construction Codes, and specifically, to enforce the provisions of Chapter 33 of the new Building Code. The two new charges are to enforce Building Code (BC) §3301.8 and Building Code §3310.8.2. Section 3301.8 requires that "[t]he department shall be notified promptly, in accordance with the circumstances, of all accidents at construction or demolition sites." Section 3310.8.2 outlines certain conditions for which, during the routine performance of his/her job, the Site Safety Manager and/or Coordinator must immediately notify the department. These conditions include unsafe or unlicensed crane operations and accidents involving the public, or private or public property. The addition of these two new charges to the Buildings Penalty Schedule II will assist in ensuring that the construction industry promptly reports conditions, incidents or accidents that affect the safety of the public and/or construction personnel. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York in order to include the same charge descriptions and classification levels for §§3301.8 and 3310.8.2, although without including the penalties themselves. The reason for this replication in DOB's Rule of these portions of Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a rule the classification level for every charge. Specifically, as mandated by §28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). 2) The Environmental Control Board also added another new charge to Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce a provision of Title 28 of the New York City Administrative Code. The charge is for a Class 1 ("Immediately Hazardous") violation of §28-105.12.2, "Work does not conform to approved construction documents and/or approved amendments." The reason for adding this Class 1 charge is to enforce against work being conducted which does not conform to approved construction documents (such as plans) or amendments to these documents. The existing Buildings Penalty Schedule II only includes Class 2 and Class 3 Severity Level Classifications for this charge. The addition of a Class 1 (Immediately Hazardous) option will allow the Department of Buildings to write NOVs for the most hazardous violations as Class 1 violations. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York to include the same charge description and classification level for §28-105.12.2. As stated above, the reason for the replication in DOB's Rule of that portion of ECB's Buildings Penalty Schedule II is that the Department of Buildings is mandated by Title 28 to set forth in a Rule the classification level for every charge. Specifically, as mandated by §28-201.2 of the NYC Administrative Code, the Department of Buildings must indicate in its rules whether a charge has a classification level of "lesser" (Class 3), "major" (Class 2), or "immediately hazardous" (Class 1). 3) The Environmental Control Board as revised four charges in Buildings Penalty Schedule II found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. (a) The first revision is to the charge for Section BC 1016.2, in order to add a "yes" in the "Cure" column, which was inadvertently omitted when the Penalty Schedule II was first promulgated; (b) The second revision is to the charge for BC 3010.1 & 27-1006, Class 1 charge, to correct the Aggravated II maximum default penalty, from $10,000 to $25,000. This higher penalty is the statutory maximum penalty, and is consistent with the maximum Aggravated II default penalty that is imposed for all Class 1 charges in the Buildings Penalty Schedule II. The change corrects a ministerial error in the

original promulgation of that Penalty Schedule; (c) The third revision is to the charge for §28-210.1, Class 1, to amend the description for that charge to now read "Residence altered for occupancy as a dwelling from 1 or 2 families to 4 or more families." This amended text will better reflect the text of the statute regarding a Class 1 illegal conversion; (d) The fourth revision is to the charge for §28-202.1, Class 1, to amend the description for that charge to now read "Additional daily penalty for Class 1 violation of 28-210.1 - 1 or 2 families converted to 4 or more families." This amended text will better reflect the text of the statute regarding daily penalties for Class 1 illegal conversions. The Buildings Department has amended §100-21 of Subchapter B of Title 1 of the Rules of the City of New York to make the same revisions to the charge descriptions for §§28-210.1 and 28-202.1, as are described in (c) and (d) above.

8. Statement of Basis and Purpose in City Record Apr. 2, 2009: The Environmental Control Board had a Public Hearing on November 6, 2008 on proposed rule revisions to its Buildings Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECHB's Penalty Schedule as set forth above. As described below, the Environmental Control Board has added various amendments and additions to charges in Buildings Penalty II, found in Title 48 of the Rules of the City of New York (RCNY). Buildings Penalty Schedule II is found in Title 48 in view of the fact that as of November 23, 2008, ECB has been consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law 35 of 2008. Title 48 of the RCNY includes OATH's rules. Accordingly, this final rule, which amends Buildings Penalty Schedule II, amends Buildings Penalty Schedule II as found within Chapter 3 of Title 48. It should be noted that with regard to all new and amended violations in this rule, the classifications (but not the penalties) are established by the Department of Buildings by a separate rule of that Department. This is because, pursuant to §28-201.2 of the NYC Administrative Code, the Commissioner of the Department of Buildings is required to promulgate rules classifying all violations enforced by the Department as Immediately Hazardous (Class 1), or as Major (Class 2), or as Lesser (Class 3). Those violation classifications are then incorporated into ECB's Penalty Schedules. **Housekeeping Violations:** The Board has added three additional charges for violations of Building Code §3303.4, to Buildings Penalty Schedule II. Section 3303.4 pertains to "housekeeping" at construction sites. This is in view of the enactment of Local law 34 of 2008, which took effect on August 12, 2008. That law amended §28-201.2.1 of the NYC Administrative Code so as to classify violations of subsections 3303.4.5 and 3303.4.6 as "Immediately Hazardous" (Class 1). Therefore, the Board has added a charging provisions for those subsections. In addition, the Board has added a new Class 1 general housekeeping violation (not specific to a particular subsection), which will be in addition to the already existing general Class 2 violation. **Concrete Safety Managers:** The Board has added a Class 1 charge for a violation of Building Code §3310.9.1, "No Concrete Safety Manager present during all concrete operations as required," to Buildings Penalty Schedule II. This is in view of the enactment of Local Law 40 of 2008, which takes effect on January 1, 2009. That Local Law adds a new section, BC 3310.9, to the Building Code, requiring additional personnel to oversee concrete operations at major buildings under construction, and requiring a Concrete Safety Manager on construction sites where a minimum of 2,000 cubic yards of concrete is to be poured. Accordingly, the Board has added a new charge to implement this new provision of law. Local Law 40 takes effect on January 1, 2009. **Supported scaffolds:** The Board has deleted the Class 2 charges for Building Code §§3314.4.5 and 3314.4.6, both of which pertain to supported-scaffolds, from Buildings Penalty Schedule II. This is in view of the enactment of Local Law 24 of 2008, which took effect on July 1, 2008. That law amended §28-201.2.1 so as to require that all violations of §§3314.4.5 and 3314.4.6 be classified as Class 1 (Immediately Hazardous). Accordingly, the Board has deleted the Class 2 charges for those sections. Additionally, the Board has amended the two remaining (Class 1) charges for §§3314.4.5 and 3314.4.6 so as to delete the additional Section numbers, 26-204.1(a) and 26,204(c), that are also listed in those charges. The reason the Board has deleted the references to §§26-204.1(a) and 26-204(c) is that the references to those sections were included in error in the initial promulgation of Buildings Penalty Schedule II. **Site safety:** The Board as added two new charges to Buildings Penalty Schedule II for violations of Administrative Code §28-110.1, namely, "Failure to provide evidence of workers attending construction & safety course," and "Failure to conduct workers' site-specific safety orientation program per site safety plan." This is in view of the enactment of Local Law 41 of 2008, which takes effect on December 2, 2008. That law amends §28-110.1 to add two new provisions that require that workers complete site safety courses, and that require Site Safety Plans to include mandatory site-specific Safety Orientation Programs. Accordingly, the Board has added two new charges to implement

these new provisions of §28-110.1 Local Law 41 takes effect on December 2, 2008. **Unlicensed activity:** The Board has deleted the Class 2 level charge for Administrative Code §28-405.1, "Supervision or use of power-operated hoisting machine without a Hoisting Machine Operator's License," from Buildings Penalty Schedule II. There is already a Class 1 charge for that violation in the Penalty Schedule. The Board has amended the charge for Administrative Code §28-408.1, "Performing unlicensed plumbing work without a master plumbing license," from a Class 2 charge to a Class 1 charge. The Board has also added a new Class 1 miscellaneous charge, "Illegally engaging in any business or occupation without a required license or other authorization," for Chapter 4 of Title 28 of the Administrative Code. The Board has proposed these various amendments and additions to Buildings Penalty Schedule II in view of the enactment of Local Law 08 of 2008, which took effect on July 1, 2008. That law amended Administrative Code §28-201.2.1 to require that a violation be classified as Class 1 where the violation is of any provision of Chapter 4 of Title 28 of the Administrative Code, for engaging in any business or occupation without a required license or other authorization. **Sidewalk sheds:** The Board has added a new Class 2 charge for a violation of Building Code §3307.3.1 & Administrative Code §27-1021(a), "Failure to provide sidewalk shed where required." There is already a Class 1 charge for this section. The Board has added a Class 2 classification in view of the fact that a Class 2 severity level may be warranted under some circumstances. **Failure to post permit for work at premises:** The Board has added a charge for a violation of Administrative Code §28-105.11, for failure to post permit for work at premises, to enable effective enforcement of this section of law. **Required Means of egress; Location of exhaust discharge:** The Board has added two new charges for failure-to-maintain in violation of Administrative Code §28-301.1: (1) respondent failed to provide the required number of means of egress for every floor, and (2) respondent improperly located an exhaust discharge. These charges have been added to enable effective enforcement with regard to these conditions. **Zoning Resolution 22-00:** The Board has added a new Class 3 charge for illegal use in a residential district in violation of §22-00 of the Zoning Resolution. This charge has been added in view of the fact that there is already a Class 3 charge in Buildings Penalty Schedule II for violations of ZR 25-41, which pertains to parking restrictions, and in view of the fact that ZR 22-00 is also at times cited in connection with violations pertaining to parking restrictions. **Material false statements in Certificate of Correction:** The Board has added a new charge for filing a false certificate of correction pursuant to Administrative Code §28-211.1, which makes it a violation to make a material false statement in various documents, including certificates of corrections. Buildings Penalty Schedule II already contains a general charge under §28-211.1; however, the Board has added this more specific charge, due to the frequency of issuance of violations in connection with certificates of correction, in particular. **Failure to comply with an order of the Commissioner:** The Board has added a new charge for failing to comply with an order of the Commissioner of the Department of Buildings in violation of Administrative Code §28-201.1. Buildings Penalty Schedule II already includes a charge for failure to comply with a Stop Work Order, and a charge for not filing a certificate of correction. However, this newly added charge will enable enforcement in connection with all other instances of failure to comply with a Commissioner's order.

9. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on various amendments to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. The Board has added eight crane-related charges to that Penalty Schedule. The Board has amended the Penalty Schedule in light of the enactment of Local Law 46 of 2008, effective December 22, 2008. Local Law 46 of 2008 added new sections to the NYC Building Code and amended sections of the NYC Administrative Code. Specifically, it added §§3319.8 through 3319.8.8 to the Building Code, and it amended §§28-201.2.1 and 28-401.19.4.1 of the NYC Administrative Code. These sections require the submission of a plan for the erection, jumping, climbing and dismantling tower or climber cranes to the Department of Buildings, and detail the items that must be included in such a plan. The sections further require certain meetings at construction sites, including safety coordination and pre-jump safety meetings, specify the topics of such meetings, and require that the Department to be notified of those meetings. The sections also require an engineer to inspect and certify a tower or climber crane prior to jumping or climbing, impose new standards during erection, jumping, climbing and dismantling operations, and require preparation and maintenance of certain schedules and logs. The Board has added these eight crane-related charges to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 46 of 2008. All of the charges have a Class 1

("Immediately Hazardous") classification level due to the seriousness of the nature of the violations (unsafe crane operations). The Department of Buildings (DOB) has already classified these eight crane charges as Class 1. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB.

10. Statement of Basis and Purpose in City Record July 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on May 14, 2009 on various amendments to ECB's Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor any oral testimony were presented. (1) The Board has added two new charges for potentially compromised buildings and structures in light of the enactment of Local Law 33 of 2008, effective February 9, 2009. That law created a new class of potentially compromised buildings and structures and imposed notification and inspection requirements on owners of such buildings. The law added §28-216.12 to the NYC Administrative Code, which defines a potentially compromised building or structure as "a building or structure that has had an open roof for sixty days or longer, that has been shored and braced or repaired pursuant to an emergency declaration issued by the commissioner, that has been subject to a precept as a compromised structure under Article 216 of this code or that may have suffered structural damage by fire or other cause as determined by the commissioner." Section 28-216.12.1 requires that the owner of such buildings or structures shall cause a structural inspection to be performed within 60 days from the date that such building becomes potentially compromised and file a report within 30 days thereafter, with details and provisions of periodic monitoring, as outlined by the commissioner. The Board has added two charges regarding compromised buildings to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 33 of 2008. The §28-212.16.1 charge ("Failure to submit required report of inspection of potentially compromised buildings") has a Class 2 (Major Violation) classification level and the §28-216.12.6 charge ("Failure to immediately notify Department that building or structure has become potentially compromised") has a Class 1 ("Immediately Hazardous") classification level. DOB has already classified these two charges in a DOB rule published in the City Record on April 2, 2009. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB. (2) The Board has added three new retaining wall charges to implement three new sections of law added to the Administrative Code by Local Law 37 of 2008, effective February 9, 2009, namely §§28-305.4, 28-305.4.6, and 28-305.4.7.3. Section 28-305.4 includes provisions that detail requirements regarding the inspection, maintenance and repair of retaining walls. Owners of retaining walls with a height of ten feet or more and fronting a public right-of-way must comply with the requirements of §28-305.4. This section requires that after a condition assessment, which must be completed at least once every five years, is complete, a report of condition assessment shall be submitted to the Department of Buildings. According to this provision, "the report shall clearly document the condition of the retaining wall and shall include a record of all significant deterioration, potentially unsafe conditions of the wall or affecting the wall, and movement observed. The report must be certified by the registered design professional." Section 28-305.4.6 requires that "[w]henever the registered design professional under whose supervision the inspection is performed learns of an unsafe condition through a condition assessment of a retaining wall, such person shall notify the owner and the department of such condition immediately by calling 311 and by written notification to the department." Section 28-305.4.7.3 requires that the owner or the owner's agent "reinspect the retaining wall and file an amended report within two weeks after the repairs have been completed certifying that the unsafe conditions of the retaining wall have been corrected." Unmaintained retaining walls can constitute a serious threat to public safety. The Board has added these three retaining wall charges to ECB's Buildings Penalty Schedule II to enforce the provisions of Local Law 37 of 2008. The §28-305.4.4 charge ("Failure to submit required report of condition assessment of retaining wall") and the §28-305.4.7.3 charge ("Failure to file an amended condition assessment acceptable to this Department indicating correction of unsafe conditions") has a Class 2 ("Major") level. The §28-305.4.6 charge ("Failure to immediately notify Department of unsafe condition observed during condition assessment of retaining wall") has a Class 1 ("Immediately Hazardous") level. DOB has classified these two charges in a DOB rule published in the City Record on April 2, 2009. As set forth in §28-201.1 of the NYC Administrative Code, it is within DOB's purview to determine the classification of all charges enforced by DOB.

11. Statement of Basis and Purpose in City Record Dec. 23, 2009: The Environmental Control Board (ECB) held a

Public Hearing on August 6, 2009 on various amendments to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. Specifically, the Board has amended the definition of "Aggravated Penalties of the second order ("Agg II")". The purpose of this amendment is to add to the Aggravated II definition, conditions that pose significant potential risks of accidents, serious injuries or fatalities but may not have resulted in such accidents, serious injuries or fatalities. The Department of Buildings has amended §102-02(f)(2) of Subchapter B of Title of the Rules of the City of New York, to reflect the underlined language in the definition of Aggravated penalties of the second order set forth in section 1 above. The Board has also amended the Class 1 (Work without a Permit) charge promulgated pursuant to §28-105.1 of the New York City Administrative Code by permitting imposition of a mitigated penalty after a hearing. Mitigation after hearing would provide an incentive to respondents who are not contesting the cited condition(s) to correct the condition(s) promptly. Mitigation allows an ECB hearing officer to impose one half the standard penalty following a hearing, if the respondent demonstrates correction of the condition(s) indicated on the notice of violation prior to the original hearing date. In §§3, 4 and 5 the Board has added eight new charges to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to enforce various regulations regarding sign hangers, as set forth in Article 415 of Title 28 of the New York City Administrative Code and in other applicable sections of the Administrative Code and of the New York City Zoning Resolution, and outdoor advertising companies, as found in Article 502 of Title 28 of the Administrative Code. These charges are as follows:

· 28-105.12.1: Outdoor sign permit application contrary to Code and ZR requirements

· 28-415.1: Hoisting, lowering, hanging, or attaching of outdoor sign not performed or supervised by a properly licensed sign hanger

· Misc Title 28/Misc ZR: Misc outdoor sign violation of ZR and/or Building Code (Class 1) and

· Misc Title 28/Misc ZR: Misc outdoor sign violation of ZR and/or Building Code (Class 2)

· 28-502.2: Outdoor Advertising Company engaged in outdoor advertising business without a valid registration (Class 1)

· 28-502.2.1: Outdoor Ad. Co. failed to submit complete/accurate information as prescribed in 1 RCNY Chapter 49 (Class 1)

· 28-502.2.2: Outdoor Advertising Company failed to post, renew or replenish bond or other form of security (Class 1)

· 28-502.5: Outdoor Advertising Company failed to post required information at sign location (Class 1)

The addition of these eight new charges to ECB's Buildings Penalty Schedule II will enhance the Department of Buildings' enforcement efforts against illegal sign hanging and outdoor advertising activity. The proposed penalties reflect the range of penalties set forth within the statute. The Department of Buildings is amending §102-01 of Subchapter B of Title 1 of the Rules of the City of New York to be consistent with these changes.

In §6 the Board has added one new charge to ECB's Buildings Penalty Schedule II, found in §3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to enforce Article 502 of Title 28 of the New York City Administrative Code and Chapter 49 of Title 1 of the Rules of the City of New York relating to Outdoor Advertising Companies. This charge is as follows:

· 1 RCNY 49-03: Outdoor Advertising Company failed to comply with Commissioner's sign-related Order (Class 1)

The addition of this new charge will enhance the Department of Buildings' efforts to enforce effectively its existing laws related to outdoor advertising companies. The proposed penalties reflect the range of penalties set forth within the statute. The Department of Buildings is amending §102-01 of Subchapter B of Title 1 of the Rules of the City of New York to be consistent with these changes.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within

ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-104

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-104 Community Right-To-Know Law Penalty Schedule.

COMMUNITY RIGHT TO KNOW LAW PENALTY SCHEDULE

For a description of mitigating and aggravating (Mit/Agg) factors, see the listing at the end of this penalty schedule.

A second or subsequent offense is a violation by the same respondent of Section 24-706, 24-711, 24-712 or 24-718 within five years of having been found in violation of the same section.

All citations are to Title 24, Chapter 7, of the NYC Administrative Code (Community Right-To-Know Law).

Section Description Offense Penalty Default Stipulation Mit/Agg

24-706(a) Failed to file a completed Facility Inventory Form 1st2nd3rd $500$3500$7500 $5000$10000$20000 YesNoNo CIJKLADIJKLBEIJKL

Failed to file a facility inventory update 1st2nd3rd $500$3500$7500 $5000$10000$20000 YesNoNo CIJKLADIJKLBEIJKL

24-706(b) Failed to submit a Material Safety Data Sheet 1st2nd3rd $500$3500$7500 $5000$10000$20000

YesNoNo IJKLAIJKLBIJKL

24-706(c) Failed to make copy of FIF or MSDS available at facility 1st2nd3rd $500$3500$7500 $5000$10000$20000 NoNoNo IJKLIJKLIJKL

24-711 Failed to properly label hazardous substance 1st2nd3rd $500$3500$7500 $5000$10000$20000 NoNoNo FIJKLFIJKLFIJKL

24-712 Failed to give access to inspect facility 1st2nd $2500$5000 $20000$20000 NoNo GHGH

24-718 Failed to properly file risk management plan 1st2nd3rd $1000$3500$7500 $5000$10000$20000 NoNoNo IJKLAIJKLBIJKL

COMMUNITY RIGHT-TO-KNOW LAW

Table of Violations-Mitigating and Aggravating Factors

Note: All additions and subtractions are cumulative, except that factors J and K cannot be applied together, and factors A, B, and L may only be applied when at least one aggravating factor is also present (i.e., they cannot be used to reduce the penalty to less than the legal minimum).

Note: Where the application of multiple aggravating factors would cause the legal maximum penalty to be exceeded, the legal maximum penalty (same as the default penalty) shall be imposed.

EHS = Extremely Hazardous Substance (as defined in §24-702(h))

ASubtract $1750 for compliance by first hearing date.

BSubtract $3750 for compliance by first hearing date. CAdd $250 if there are any EHS stored at the facility. DAdd $1750 if there are any EHS stored at the facility. EAdd $3750 if there are any EHS stored at the facility. FAdd $100 for each unlabeled non-EHS hazardous substance more than one; add $2000 for each unlabeled EHS. GAdd $1000 if there are 25 or more hazardous substances stored at the facility; add $5000 if there are more than 50 hazardous substances stored at the facility or if any EHS are stored at the facility. NOTE: This factor may only be applied until the legal maximum penalty has been reached. HAdd $5000 for willful refusal to allow access to the facility, or physical interference with or obstruction of the inspection. IAdd $1000 if there was an emergency response to the facility. JAdd $2500 if there was a release of a hazardous substance at the facility. KAdd $4500 if release of a hazardous substance at the facility resulted in injury to any person, or injury to plant or animal life, or damage to property or business. LSubtract $250 where the existence of the violation was voluntarily disclosed to DEP by respondent.

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-104) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

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Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-105

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-105 Environmental Conservation Law Penalty Schedule.

ENVIRONMENTAL CONSERVATION LAW PENALTY SCHEDULE

Section/Rule Description Penalty Default

NYS Env. Cons. Law 27-1701(3) Improper disposal of lead acid battery 50 50

NYS Env. Cons. Law 27-1701(3) Improper storage of lead acid battery 50 50

NYS Env. Cons. Law 27-1701(4) Failure to collect/accept returned lead acid battery 250 500

NYS Env. Cons. Law 27-1701(5) Failure to refund deposit for lead acid battery 50 50

NYS Env. Cons. Law 27-1701(5) Failure to inform consumer of refund policy 50 50

NYS Env. Cons. Law 27-1701(6) Failure to post sign regarding lead acid battery recycling 50 50

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-105) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-106

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-106 Fire Penalty Schedule.

FIRE PENALTY SCHEDULE

Fire Penalty Schedule I: Effective For Notices of Violation With a Date of Occurrence On or Before June 30, 2008:

The Penalty Schedule set forth below, Fire Penalty Schedule I, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or before June 30, 2008.

All Rules cited below are found in Section 16-03 of Title 3 of the Rules of the City of New York. All citations preceded by "A.C." are citations to the NYC Administrative Code.

The mitigated (MIT.) penalty is available if the condition is corrected as of the original hearing date. (A stipulation is available in some cases at the mitigated penalty if there is concurrence by the Fire Department, and good faith efforts to correct have commenced as of the original hearing date.)

A second or subsequent violation is a violation by the same respondent of the same provision of law, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee, or other person in control of the premises with respect to which the violation occurred, at the same premises, with a date of occurrence within 18 months

of the date of occurrence of the previous violation.

Section/Rule Description First Violation Second Violation

Penalty MIT. MAX. Penalty MIT MAX.

Rule 1 Buckets and/or Fire Extinguishers $500 250 1000 1500 750 5000

Rule 2 Waste Receptacles 500 250 1000 1500 750 5000

Rule 3 No FDNY Permit 400 200 1000 1250 625 5000

Rule 4 Quantities in Excess of Permit 400 200 1000 1250 625 5000

Rule 5 Produce Permit and/or Record 600 300 1000 1750 900 5000

Rule 6 Signs/Postings/Instructions 500 250 1000 1500 750 5000

Rule 7 Labels/Marks/Stamps 500 250 1000 1500 750 5000

Rule 8 Obstructions/ Accumulations 600 300 1000 1750 900 5000

Rule 9 Adequate Egress/Aisle Space/Clearance 600 300 1000 1750 900 5000

Rule 10 Occupancy Load Restrictions 500 250 1000 1500 750 5000

Rule 11 General Maintenance 400 200 1000 1250 625 5000

Rule 12 Maintenance of Sprinkler/Standpipe/Alarm Systems 900 450 1000 2000 1200 5000

Rule 13 Fire Retardant Material 750 375 1000 1750 900 5000

Rule 14 Fireproof Doors/Windows 750 375 1000 1750 900 5000

Rule 15 Fireproof Partitions or Walls 750 375 1000 1750 900 5000

Rule 16 Ventilation 600 300 1000 1750 900 5000

Rule 17 Certificates of Fitness 600 300 1000 1750 900 5000

Rule 18 FDNY Certificates of Approval/Qualification/ License 600 300 1000 1750 900 5000

Rule 19 Public Assembly Permit/Affidavits/Documentation/Plans 500 250 1000 1500 750 5000

Rule 20 Test/Inspection 400 200 1000 1250 625 5000

Rule 21 Containers 500 250 1000 1500 750 5000

Rule 22 Tanks/Supports 750 375 1000 1750 900 5000

Rule 23 Storage 500 250 1000 1500 750 5000

Rule 24 Racks 500 250 1000 1500 750 5000

Rule 25 Electrical Equipment 800 400 1000 1750 900 5000

Rule 26 Approved Refrigeration/Heating Devices or Units 600 300 1000 1750 900 5000

Rule 27 Approved Lighting Devices 600 300 1000 1750 900 5000

Rule 28 Exposed Flames or Sparks 800 400 1000 1750 900 5000

Rule 29 Designated Areas 500 250 1000 1500 750 5000

Rule 30 Fire Safety in Office Buildings/Hotels/Motels 900 450 1000 2000 1200 5000

A.C. 15-231 Fail to comply with Comm. Order to correct & certify 1250 None 5000 3500 None 5000

A.C. 15-220.1 False Certification 2500 None 5000 4500 None 5000

Fire Penalty Schedule II: Effective For Notices of Violation With a Date of Occurrence On or After July 1, 2008:

The Penalty Schedule set forth below, Fire Penalty Schedule II, sets forth the penalties that will be imposed in connection with Notices of Violation with a date of occurrence on or after July 1, 2008.

This schedule sets forth penalties for violations of the New York City Fire Code, Fire Department rules and other laws, rules and regulations enforced by the Fire Department. The violation categories set forth below are derived from §109-02 of Title 3 of the Rules of the City of New York. All citations preceded by "AC" are citations to the NYC Administrative Code.

The mitigated (MIT) penalty is available if the condition is corrected as of the original hearing date. (A stipulation is available in some cases at the mitigated penalty if there is concurrence by the Fire Department, and good faith efforts to correct have commenced as of the original hearing date.)

A violation is subject to second or subsequent violation penalties when: (1)(a) it is a violation by the same respondent of the same provision of law, rule, or Violation Category as a prior violation that has a date of occurrence within 18 months, or (b) it is a violation by the same respondent of the predecessor provision of law, rule or Violation Category (previously "Rule") that has a date of occurrence within 18 months; and (2) if the respondent is the owner (as defined in the Fire Code) of the premises with respect to which the violation occurred, if the prior violation occurred at the same premises.

Section/ViolationCategory Description First Violation Second or Subsequent Violation

Penalty MIT. MAX. Penalty MIT MAX.

Violation Category 1 Portable Fire Extinguishers and Fire Hoses $500 250 1000 1500 750 5000

Violation Category 2 Combustible Waste Containers 500 250 1000 1500 750 5000

Violation Category 3 Permits 400 200 1000 1250 625 5000

Violation Category 4 Unlawful Quantity or Location of Regulated Material 400 200 1000 1250 625 5000

Violation Category 5 Posting of Permits and Record Keeping 600 300 1000 1750 900 5000

Violation Category 6 Signs, Postings, Notices and Instructions 500 250 1000 1500 750 5000

Violation Category 7 Labels/Markings 500 250 1000 1500 750 5000

Violation Category 8 Accumulation and Removal of Combustible Waste 600 300 1000 1750 900 5000

Violation Category 9 Means of Egress 600 300 1000 1750 900 5000

Violation Category 10 Overcrowding 500 250 1000 1500 750 5000

Violation Category 11 General Maintenance 400 200 1000 1250 625 5000

Violation Category 12 Fire Protection Systems 900 450 1000 2000 1200 5000

Violation Category 13 Flame-Resistant Materials 750 375 1000 1750 900 5000

Violation Category 14 Fire-Rated Doors and Windows 750 375 1000 1750 900 5000

Violation Category 15 Fire-Rated Construction 750 375 1000 1750 900 5000

Violation Category 16 Ventilation 600 300 1000 1750 900 5000

Violation Category 17 Certificates of Fitness and Certificates of Qualification 600 300 1000 1750 900 5000

Violation Category 18 Certificates of Approval, Certificates of License and Company Certificates 600 300 1000 1750 900 5000

Violation Category 19 Affidavits, Design/Installation Documents, and Other Documentation 500 250 1000 1500 750 5000

Violation Category 20 Inspection and Testing 400 200 1000 1250 625 5000

Violation Category 21 Portable Containers 500 250 1000 1500 750 5000

Violation Category 22 Stationary Tanks 750 375 1000 1750 900 5000

Violation Category 23 Storage Facilities 500 250 1000 1500 750 5000

Violation Category 24 Racks and Shelf Storage 500 250 1000 1500 750 5000

Violation Category 25 Electrical Hazards 800 400 1000 1750 900 5000

Violation Category 26 Heating and Refrigerating Equipment and Systems 600 300 1000 1750 900 5000

Violation Category 27 Electrical Lighting Hazards 600 300 1000 1750 900 5000

Violation Category 28 Open Fires, Open Flames and Sparks 800 400 1000 1750 900 5000

Violation Category 29 Designated Handling/Use Rooms or Areas 500 250 1000 1500 750 5000

Violation Category 30 Fire Safety in Office Buildings, Hotels, and Motels 900 450 1000 2000 1200 5000

AC 15-231 Fail to Comply with Commissioner's Order to Correct and Certify 1250 None 5000 3500 None 5000

AC 15-220.1 False Certification 2500 None 5000 4500 None 5000

FC1404.1 Smoking on Construction Site 1,000 No 1,000 2,400 No 2,400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-106) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fire Penalty Schedule I designated City Record July 1, 2008 §1, eff. July 1, 2008 per City Record notice. [See Note 1]

Fire Penalty Schedule I open par added City Record July 1, 2008 §1,eff. July 1, 2008 per City Record notice. [See Note 1]

Fire Penalty Schedule II added City Record July 1, 2008 §1, eff. July 1, 2008 per City Record notice. [See Note 1]

Third undesignated paragraph amended City Record June 20, 2005 §7, eff. July 20, 2005. [See T48 §3-101 Note 1]

Fourth undesignated paragraph repealed and added City Record Dec. 9, 2008 §1, eff. Jan. 8, 2009. [See Note 2]

Table FC1404.1 added City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 3]

NOTE

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

The Environmental Control Board (ECB) had a Public Hearing on June 23, 2008, on proposed revisions of its Fire Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

The Board has revised the ECB Fire Penalty Schedule set out in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. These revisions are intended to implement in part the new Fire Code for the City of New York. The new Fire Code was enacted on May 28, 2008. The new Fire Code comprises Title 29 of the New York City Administrative Code, becomes effective on July 1, 2008. The Local Law enacting the new Fire Code repeals the existing Fire Code, found in Chapter 4 of Title 27. Among other things, the Local Law also repeals subdivisions (7) through (19) of §15-232 of the New York City Administrative Code, which pertains to Chapter 4 of Title 27.

As a result of the enactment of the new Fire Code, the Board has adopted a new Fire Penalty Schedule (Fire Penalty Schedule II), as well as retaining the existing Fire Penalty Schedule (Fire Penalty Schedule I). Fire Penalty Schedule I applies to all ECB Notices of Violation issued by the Fire Department with a date of occurrence on or before June 30, 2008. Fire Code Penalty Schedule II applies to all ECB Notices of Violation issued by the Fire Department with a date of occurrence on or after July 1, 2008.

The Fire Department is in the process of promulgating Rules in order to implement the provisions of the new Fire Code. One of those Fire Department Rules, §109-02 of Title 3 of the Rules of the City of New York, will set forth Violation Categories for Fire Department enforcement purposes. §109-02 will re-name and re-organize the Violation Categories (previously denominated "Rules") that are now in effect pursuant to §16-03 of Title 3 of the Rules of the City of New York. Under each of these new Violation Categories, the new Fire Department Rule 109-02 will set forth the relevant section numbers of the new Fire Code. The Board's Fire Penalty Schedule II reflects these new Fire Department Violation Categories, and sets forth penalties for violations of any of the Sections of the Fire Code that are listed under those Violation Categories. The penalties set forth in Fire Penalty Schedule II remain the same as those set forth in Fire Penalty Schedule I.

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that revises the ECB Fire Penalty Schedule set out in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The new ECB rule implements in part the new Fire Code, which become effective on July 1, 2008. The new ECB rule includes the new ECB Fire Penalty Schedule which will apply to all Fire Notices of Violation returnable to ECB issued on or after July 1, 2008. The new Fire Department rule on which such Notices of Violation will be based, and the violation categories it establishes will apply to all Fire Notices of Violation returnable to ECB issued on or after July 1, 2008.

In view of the July 1, 2008, effective date of the new Fire Code, the implementation of the new ECB rule upon publication is necessary to ensure that the new Fire Code can be enforced beginning on the effective date.

2. Statement of Basis and Purpose in City Record Dec. 9, 2008: The Environmental Control Board had a Public Hearing on November 6, 2008 on proposed revisions of its Fire Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Fire Penalty Schedule as set forth above. The Environmental Control Board (ECB) has revised the definition of "second or subsequent" violation found in ECB's Fire Penalty Schedule II, found in §3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The revision will ensure that the higher "second or subsequent" penalty amount will be imposed not only when there is a prior violation of the predecessor section of law, rule or Violation Category (previously "Rule"). The term "Violation Category" is included in the proposed definition of "second or subsequent" violation because the NYC Fire Department, for enforcement purposes, classifies charging provisions into categories denominated "Violation Categories" (1 RCNY 109-01). The equivalent classifications were denominated "Rule" categories under the superseded Fire Code (3 RCNY 16-03). ECB's Fire Penalty Schedule II reflects the current Violation Categories. Therefore, for example, under the proposed definition, if a current violation is of a "Violation Category 1" charge, that violation will constitute a "second or subsequent" violation if the respondent was previously found in violation of either (i) any "Violation Category 1" charge issued pursuant to the current Fire Code with a date of occurrence within 18 months of the date of occurrence of the current charge, if all other criteria set forth in the definition of "second or subsequent" violation are met, or (ii) any "Rule 1" charge issued pursuant to the superseded Fire Prevention Code, with a date of occurrence within 18 months of the date of occurrence of the current charge, if all other criteria set forth in the definition of "second or subsequent" violation are met. ECB's Fire Penalty Schedule is found in Title 48 in view of the fact that as of November 23, 2008, ECB will have been consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law 35 of 2008. Title 48 of the RCNY includes OATH's rules. Accordingly, this final rule has amended the Fire Penalty Schedule as found within Chapter 3 of Title 48.

3. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of its Fire Penalty Schedule to add a new charge, for a violation of §1404.1 of the Fire Code, to Fire Penalty Schedule II, found in §3-106 of Title 48 of the Rules of the City of New York. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. Section 1404.1 of the Fire Code prohibits smoking on construction sites. Up until now, §1404.1 has been enforced by the Fire Department via notices of violations that cite to the "General Maintenance" provision of Violation Category 11, found in 3 RCNY 109-02. Those violations carry a $400 penalty for a first offense (which can be mitigated to $200 if correction is shown by the first scheduled hearing date), and a $1,250 second offense penalty (which can be mitigated to $625 if correction is shown by the first scheduled hearing date). The new charge carries a higher penalty, commensurate with the seriousness of the condition. Specifically, the new charge of §1401.1 carries a first offense penalty of $1,000 (which cannot be mitigated) and a second offense penalty of $2,400 (which cannot be mitigated). The purpose of adding this separate charge for §1404.1 to Fire Penalty Schedule II is to enable these higher penalties to be imposed for this serious violation.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers

("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-107

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-107 Food Vendor Administrative Code Penalty Schedule.

FOOD VENDOR ADMINISTRATIVE CODE

PENALTY SCHEDULE

Multiple Offense Schedule (MOS): 1st Violation $50 (default $50); 2nd Violation $100 (default $100); 3rd Violation $250 (default $250); 4th Violation $500 (default $1,000); 5th Violation $750 (default $1,000); 6th and subsequent Violation $1,000 (default $1,000).

A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an "MOS" penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation(s), and where the previous violation(s) was a violation of any section of law that is subject to an "MOS" penalty as indicated in this Penalty Schedule.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code.

Section/Rule Description Penalty Default

Admin. Code 17-307(a) Unlicensed Mobile food vendor 1,000 1,000

Admin. Code 17-307(b) Unpermitted Mobile Food Unit 1,000 1,000

Admin. Code 17-307(b)(1) Vending food other than fresh fruits and vegetables 1,000 1,000

Admin. Code 17-307(c)* Lack of permit for commissary or distribution place 200 1,000

Admin. Code 17-307(d) Vending of unapproved items MOS MOS

Admin. Code 17-311 Fail to display license and/or plate MOS MOS

Admin Code 17-311(d) Green Cart Vendor failed to carry map showing authorized vending areas MOS MOS

Admin. Code 17-312 Fail to notify of change of license information MOS MOS

Admin. Code 17-313 Failure in bookkeeping requirements MOS MOS

Admin. Code 17-314(a) Fail to permit regular inspections MOS MOS

Admin. Code 17-314(b) Failure to give supplier/depot/commissary information MOS MOS

Admin. Code 17-314(c) Sale of unauthorized foods without written approval MOS MOS

Admin. Code 17-314(d) Fail to surrender license, permit and plate MOS MOS

Admin. Code 17-314.1 Sale, loan, lease or transfer of license, permit or plate MOS MOS

Admin. Code 17-315(a) Vendor on sidewalk less than 12 ft., or not at curb MOS MOS

Admin. Code 17-315(b) Cart touching or leaning against building MOS MOS

Admin. Code 17-315(c) Items not in or under cart (except waste container) MOS MOS

Admin. Code 17-315(d) Vending pushcart or stand against display window or 20 ft. of entrance MOS MOS

Admin. Code 17-315(e) In bus stop, or 10 ft. of drive, subway, crosswalk, etc. MOS MOS

Admin. Code 17-315(f) Violation of parking rules and regulations MOS MOS

Admin. Code 17-315(h) On median strip, not intended for mall or plaza MOS MOS

Admin. Code 17-315(i) Vending within Parks jurisdiction without Comm. approval MOS MOS

Admin. Code 17-315(j) Failure to move after notice of exigent circumstances given MOS MOS

Admin. Code 17-316 Transfer of food to unlicensed food vendor for resale MOS MOS

Admin. Code 17-315(k), (l) Vending at time/place prohibited MOS MOS

24 RCNY 6-01(m) Green Cart umbrella not opened while vending MOS MOS

24 RCNY 6-01(m) Green Cart umbrella not safely secured or in good condition or repair MOS MOS

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-107) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added (Note, identical to City Record June 20, 2005 addition) City Record Jan. 26, 2006 §2, eff. Feb. 25, 2006. [See Note 1]

Section added City Record June 20, 2005 §9, eff. July 20, 2005. [See T48 §3-101 Note 1]

Third undesignated par amended City Record Nov. 25, 2008 §10, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Schedule Admin. Code 17-307(b)(1) added City Record Oct. 10, 2008 §, eff. Nov. 9, 2008. [See Note 2]

Schedule Admin. Code 17-311(d) added City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 2]

Schedule 24 RCNY 6-01(m) Green Cart...vending added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 2]

Schedule 24 RCNY 6-01(m) Green Cart...repair added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 26, 2006:

The Environmental Control Board has adopted penalty schedules for food and general vending violations pursuant to the authority set forth in subdivision c of §1404 of the New York City Charter. The purpose of these penalty schedules is to ensure that penalties imposed upon licensed and unlicensed street vendors who do not comply with City laws and rules governing vending are commensurate with the seriousness of the violations and are sufficient to deter illegal vending. They are also adopted to assure that such penalties are imposed in a uniform and consistent manner. In adopting the schedules, the Board carefully considered the presentations and comments submitted at the public hearings held on November 18, 2004 and April 18, 2005. The Board also considered the written comments submitted by members of the public to the Board both during and after each public hearing. In addition, it considered the letters submitted to the Board by the Department of Consumer Affairs and the Department of Health and Mental Hygiene. **As a result of the testimony, comments, and material received at and after the November 18, 2004 public hearing, the Board has modified the then proposed penalty schedules. The penalty schedules set forth in the initial proposed rule included Multiple Offense Penalty Schedules setting forth penalties for first, second, third, and fourth offenses, with the fourth offense resulting in the maximum penalty provided by law. By contrast, the Multiple Offense Penalty Schedules as set forth in this final rule set forth penalties for first, second, third, fourth, fifth, and sixth offenses, with the sixth offense resulting in the maximum penalty provided by law. The Board balanced the concerns articulated on behalf of the vending community with the need to ensure compliance and deter repeated violations. Accordingly, the Board modified the schedules to increase the number of offenses that must occur before the statutory maximum penalties** will **be imposed.**

The Board's decision to adopt these penalty schedules is based upon the following: 1) the penalties imposed by the Board prior to the increase set forth herein are no longer effective in encouraging compliance with the laws being enforced, including significant health and safety provisions; 2) the proposed penalties are more appropriate in view of inflation and provide a reasonable financial incentive for vendors to comply with the law; and 3) vendors who repeatedly violate the vending laws should be subject to higher penalties; so that the payment of penalties is not simply a part of their cost of doing business. The proposed penalty schedules comport with existing statutory minimum and maximum penalties set forth in §§17-325 and 20-472 of the Administrative Code of the City of New York.

The Board's decision to adopt schedules with penalties greater than those imposed prior to the increase set forth herein for various violations of the Health Code is further warranted in light of an amendment to §3.12 of the New York City Health Code **(set forth in Title 24 of the Rules of the City of New York)** increasing the minimum penalties for permit and license related violations to $1,000, the minimum default penalty for such charges to $2,000 and the minimum penalty for other Health Code penalties to $200. These are serious violations and these increases are also intended to impose penalties that are commensurate with the seriousness of the violations and encourage compliance with the law. The penalties are within the statutory minimum and maximum penalties set forth by §3.12 of the New York City Health Code.

Supplemental Notice:

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by §1404(c)(3) of the New York City Charter, and in accordance with §1043(b) of the Charter, that the Environmental Control Board hereby promulgates the following sections of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. This is a final version of penalties for general and food vending violations in §§3-107, 3-109 and 3-110 of Title 48 of the Rules of the City of New York. This final version is being republished pursuant to the direction of Justice Michael D. Stallman in a decision, dated December 21, 2005, in the case of **Street Vendor Project, on behalf of its members Ousmane Moussa and Mohammed Alali v. City of New York and Emily Lloyd, Commissioner of the Department of Environmental Protection and Chairperson of the Environmental Control Board,** New York State Sup. Ct., New York County, Index No. 402339/05. The substance of the above sections is identical to that originally published as a final rule in the City Record on June 20, 2005. The rule was published as a Proposed Rule in the City Record on March 17, 2005 and the Public Hearing was held on April 18, 2005. In addition, prior to the publication of the Proposed Rule in the City Record on March 17, 2005, an earlier version of the Proposed Rule was published in the City Record on October 15, 2004 and a Public Hearing was held on November 18, 2004.

2. Statement of Basis and Purpose in City Record Oct. 10, 2008: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Food Vendor Administrative Code Penalty Schedule and Health Code and Miscellaneous Food Vendor Code Violation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has added four new charges to the Food Vendor Administrative Code Penalty Schedule, §31-107 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Two of these new charges are for violations of §6-01(m) of Title 24 of the Rules of the City of New York. The addition of these new charges will enable the enforcement of a new Department of Health and Mental Hygiene (DOHMH) Rule, §6-01(m) of Title 24 of the Rules of the City of New York, which implements the requirements of the recently enacted "Green Carts" law, Local Law No. 9 of 2008. That law authorizes DOHMH to issue fresh fruits and vegetables ("Green Carts") permits, and also requires that the Green Carts have a distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner. Accordingly, the new DOHMH Rule requires that all Green Carts have a distinctive umbrella, and that the umbrella be safely secured and maintained in good condition. The third charge that the Board has added to the Food Vendor Administrative Code Penalty Schedule is for a violation of §17-307(b)(1), which was added to the NYC Administrative Code by Local Law 9 of 2008, and which provides that no food vendor issued a fresh fruits and vegetables permit shall vend any food other than fresh fruits and vegetables from the cart or vehicle for which the permit was issued. The fourth charge is for a violation of §17-311(d), also added to the NYC Administrative

Code by Local Law 9 of 2008, which provides that vendors who are issued fresh fruits and vegetables permits must carry a map designating those areas of the city in which they are authorized to vend. The Board has added six new charges to the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in §31-110 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Two of these new charges are for violations of §81.08 of the NYC Health Code, which applies to all food service establishments (FSEs) including mobile food units. Beginning July 1, 2008, FSEs may not store, serve, sell, or use any food or food item in the preparation of a menu item if it contains partially hydrogenated vegetable oil, shortening, or margarine that has 0.5 grams or more of trans fat per serving. One of the two added new charges is for storing, distributing or holding for service or using in preparation of a menu item, or serving a food containing artificial trans fat in violation of this Section 81.08(a). The other added charge is for failing to maintain on site the original nutrition fact label and/or ingredient label or acceptable manufacturers' documentation in violation of §81.08(c). The other four charges that the Board has added to the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in §31-110 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York are for violations of 81.50(c) of the NYC Health Code. Section 81.50(c) requires that a FSE, including a mobile food vending unit, that is one of a group of fifteen or more FSEs doing business nationally, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that are operating under common ownership or control, or as franchised outlets of parent business, or doing business under the same name, post calorie information for menu items on menus and menu boards. These four added charges implement the provisions of §81.50(c). The Board also has added text to the sentence in the headnote at the beginning of the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule to indicate that there now is a citation within that Penalty Schedule to the Rules of the City of New York (RCNY).

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which

provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and

Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

153 of 198 DOCUMENTS

Rules of the City of New York

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

48 RCNY 3-108

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-108 Fulton Fish Market/Other Public Markets Penalty Schedule.

FULTON FISH MARKET/OTHER PUBLIC MARKETS VIOLATIONS

PENALTY SCHEDULE

Repeat penalties apply for violations of the same subsection and penalty schedule description.

2nd, 3rd, 4th, 5th and subsequent (subs.) violations are defined as a violation by the same respondent with a date of occurrence within five years of the date of occurrence of the previous violation.

Code/RuleSection Description 1stOffencePenalty Repeat Penalty DefaultPenalty

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER A: MARKETS GENERAL

66 RCNY 1-03(a) Failed to obtain written lease, license or permit 1000 2ndSubs. 25005000 7500

66 RCNY 1-03(b) Sale of unauthorizedmerchandise 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-03(d) Unauthorized transfer/assignment of lease, license or permit 1000 2ndSubds. 25005000 7500

66 RCNY 1-03(g) Failed to furnish information upon request 300 2nd3rd4thSubs. 600 90015003000 7500

66 RCNY 1-03(g) Failed to permit entry upon the premises 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-04(b) Failed to display license plate, permit or badge 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. at closing time 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. on a daily basis 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-04(e) Failed to clear all vehicles, produce and/or refuse as per subsec. When ordered by the Comm'r 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(a) Damaged, removed and/or destroyed property and/or equipment 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(b) Illegally discarded or transferred refuse, litter or rubbish 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(c) Improper discharge of sewage/drainage into tidal water. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(d) Caused or permitted drains/sewers to be damaged/choked/clogged 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-05(e)(1) Failed to obey an order, notice, instruction, etc. of the Dept. or City Agency 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-05(e)(6) Refused/attempted to avoid any charge, toll, price or fee of the Comm'r 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-05(e)(7) Refusing to surrender required documents to Dept., as per subsec. 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(e)(9) Caused or permitted injury to any person, animal or property 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(f)(2) Failure to register firearms with Comm'r 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-05(h) Illegal distribution or taking of photographs/video 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-06(c) Failure to remove disabled vehicle as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-07 Misrepresentation of merchandise offered for sale 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-07 Use of scale not tested and approved by the City 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(a) Failed to provide exterminator services as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(b) Display of signage without written permission of Comm'r 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(c) Failed to maintain bldg., stores, etc., in sanitary condition as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(c) Obstructed sidewalk, aisle, lane, street or avenue 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-08(e) Illegal display/storage of merch., on sidewalk/loading platform 100 2nd3rdSubs. 250 5001000 2500

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER A-1: PUBLIC WHOLESALE MARKETS

66 RCNY 1-14(b) Failed to notify Comm'r of ownership/employee changes as per subsec. 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-14(b) Failed to notify Comm'r of arrest/conviction of any principal 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-14(b) Failed to notify Comm'r of material changes of info. provided in subsec. (a) 500 2nd3rdSubs. 100020003000 5000

66 RCNY 1-15(a) Failed to obtain identification card as per subsec. 300 2nd3rdSubs. 75015003000 5000

66 RCNY 1-15(b) Failed to produce ID card upon demand 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-19(a)(1) Improper transfer of registration number 1,000 2ndSubs. 25005000 7500

66 RCNY 1-19(a)(2) Unauthorized sublease of registration number, premises and/or business 1,000 2ndSubs. 25005000 7500

66 RCNY 1-19(b) Failed to affix & display name and reg. number on premises &/or vehicles 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-19(c) Failed to maintain books, records, etc. as per subsec. 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-19(c) Failed to retain books, records, etc., and make available for inspection 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-20.7(a)(1) Interfered with lawful duties of Market Manager or his staff 1500 2ndSubs. 30005000 7500

66 RCNY 1-20.7(a)(1) Interfered with/obstructed orderly function of Market 1000 2ndSubs. 30005000 7500

66 RCNY 1-20.7(a)(2) Interfered with/obstructed any operation, etc., of mkt. registrant 250 2nd3rdSubds. 50010003000 5000

66 RCNY 1-20.7(b)(3) Conducted business using unregistered name 1000 2ndSubds. 25005000 7500

66 RCNY 1-20.7(b)(11) Employed individuals without approved ID cards 1000 2ndSubs. 25005000 7500

66 RCNY 1-20.7(b)(12) Use of unregistered/uninsured vehicle 100 2nd3rdSubs. 250 5001000 2500

TITLE 22 NYC ADMINISTRATIVE CODE CHAPTER 1-B: OTHER PUBLIC MARKETS

Admin. Code 22-252(a) Daily failure to obtain identification card as per subsec. (between 11 and 30 days) 2500 Subs. 5000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (single day) 1000 2ndSubs. 25005000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (between 2 and 10 days) 2500 Subs. 5000 5000

Admin. Code 22-253(a) Daily failure to register wholesale and/or market businesses, as per subsec. (between 11 and 30 days) 3500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (single day) 2500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (between 2 and 10 days) 3500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using regis. certif. and/or number (between 11 and 30 days) 5000 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (single day) 1000 2ndSubs. 25005000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (between 2 and 10 days) 2500 Subs. 5000 5000

Admin. Code 22-262 Daily failure to surrender and/or cease using identification card (between 11 and 30 days) 3500 Subs. 5000 5000

TITLE 66 RCNY CHAPTER 1 SUBCHAPTER B: FULTON FISH MARKET

66 RCNY 1-23(a)(1) Failed to possess identification card as per subsec. 300 2nd3rdSubs. 75015003000 5000

66 RCNY 1-23(a)(2) Failed to display identification card as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-24(a) Operated an unloading business without a license 1000 2ndSubs. 25005000 5000

66 RCNY 1-24(b) Operated a loading business without a license 1000 2ndSubs. 25005000 5000

66 RCNY 1-25(d)(1) Unauthorized transfer of license 1000 2ndSubs. 25005000 7500

66 RCNY 1-25(d)(2) Failed to provide notice of addition of principal 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-26(a) Failed to maintain required insurance 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-26(b)(1) Failed to notify Comm'r of material change in license info. 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-26(c) Failed to notify Comm'r of arrest/conviction of principal, employee or agent 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-28(d) Failed to surrender license upon suspension or revocation 2500 Subs. 5000 5000

66 RCNY 1-28(d) Failed to surrender identification card upon suspension/revocation of license (principal, employee or agent) 1000 2ndSubs. 25005000 5000

66 RCNY 1-29 Failed to comply with conditions in unloading license 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-29(a)(3), (b)(3) Failed to unload in required order, as per subsec. 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(b)(1) Unloading outside approved, designated and/or assigned areas 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(b)(4) Refused to unload trucks in approved or assigned unloading area 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(1) Charged rates in excess of those specified in unloading license (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(c)(1) Failed to post rates in appropriate locations (Unloader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(2) Failed to verify bill of lading/obtain signature/record license # (Unloader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-29(c)(3) Failed to keep/make available weekly records (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(d)(1) Unloader engaged in business/activity interfering with unloading business 250 2nd3rdSubs. 50010003000 5000

66 RCNY 1-29(d)(2) Interfered with market manager as per subsec. (Unloader) 1500 2ndSubs. 30005000 7500

66 RCNY 1-29(d)(2) Obstructed unloading process as per subsec. (Unloader) 1000 2ndSubs. 25005000 7500

66 RCNY 1-29(d)(3) Requested/accepted unauthorized fees and/or gratuities (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-29(d)(3) Charged unauthorized fees (Unloader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30 Failed to comply with loading license conditions (Loader) 300 2nd3rd4thSubs. 600 90015003000 5000

66 RCNY 1-30(a)(1) Failed to post copies of rates (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(a)(2) Charged rates in excess of those specified in loading license (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(b)(1) Loaded outside designated/approved areas (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(b)(3) Loaded outside designated hours (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(c)(1) Charged fees not specified in license (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(1) Solicited or accepted unauthorized gratuities (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(3) Refused to perform loading services when space is available (Loader) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-30(c)(4) Forced another to use or prevented another from using loading services (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(4) Solicited, threatened and/or agreed to refuse loading services (Loader) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-30(c)(5) Moved or interfered with any vehicle, as per subsec. (Loader) 250 2nd3rdSubs. 50010003000

5000

66 RCNY 1-31(a) Operated wholesale or delivery seafood business without registration or stand permit from Comm'r 1000 2ndSubs. 25005000 5000

66 RCNY 1-32(d) Failed to notify Comm'r of changes in registration information. (Wholesaler/Deliverer) 500 2nd3rdSubs. 100025005000 7500

66 RCNY 1-32(g) Failed to surrender identification card upon suspension/revocation of registration (Wholesaler/Deliverer) 1,000 2ndSubs. 25005000 5000

66 RCNY 1-33(a)(1) Unauthorized transfer of registration number and/or stand permit (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(a)(2) Allowed use of registration number/business name by others (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(a)(3) Allowed another to place seafood in stand space (Wholesaler) 1,000 2ndSubs. 25005000 7500

66 RCNY 1-33(b)(2) Failed to affix and prominently display name and/or reg.number (Wholesaler) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-33(d) Failed to keep and/or make available records, bills, etc. as per subsec. (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(e) Failed to submit proof of worker's comp. coverage as per subsec. (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(f) Failed to maintain required liability insurance (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(g) Failed to procure/maintain payment bond (Wholesaler) 300 2nd3rdSubs. 600 9003000 5000

66 RCNY 1-33(i)(1) Solicited unloader to unload out of order (Wholesaler) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-33(i)(2) Obstructed orderly function of market (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(2) Interfered with market manager (Wholesaler) 1500 2ndSubs. 30005000 7500

66 RCNY 1-33(i)(3) Authorized another to use business name (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(4) Authorized another to use registration number (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(5) Subleased or allowed use of premises by unregistered person (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(6) Authorized another to use permit to place seafood on street (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(7) Conducted business under unregistered name (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(8) Discarded seafood contrary to requirements of subsec. (Wholesaler) 1000 2ndSubs. 25005000 7500

66 RCNY 1-33(i)(10) Failed to notify Comm of change of ownership of business employee status (Wholesaler) 500

2nd3rdSubs. 100025005000 7500

66 RCNY 1-34(a) Operated a seafood delivery operation in non-designated area (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(1) Operated vehicle without valid driver's license (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(2) Operated vehicle without registration, inspection sticker and/or insurance coverage (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(b)(3) Failed to display sticker and/or decal on vehicle, as per subsec. (Deliverer) 100 2nd3rdSubs. 250 5001000 2500

66 RCNY 1-34(c) Offered seafood for resale to public without wholesale registration (Deliverer) 1000 2ndSubs. 25005000 5000

66 RCNY 1-35 Failed to comply with order of market manager regarding safety/order/health in market area 1000 2ndSubs. 25005000 7500

66 RCNY 1-36(b)(2) Interfered with or intentionally damaged properly/equipment used for loading/unloading purposes 1000 2ndSubs. 25005000 5000

TITLE 22 NYC ADMINISTRATIVE CODE CHAPTER 1-A: FULTON FISH

MARKET DISTRIBUTION AREAS

Admin. Code 22-204(a) Operated an unloading business or provided unloading services without a license 1000 2ndSubs. 25005000 5000

Admin. Code 22-206(a) Operated an loading business or provided loading services without a license 1000 2ndSubs. 25005000 5000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-108) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and

(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including

31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-109

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-109 General Vendor Penalty Schedule.

GENERAL VENDOR PENALTY SCHEDULE

Multiple Offense Schedule (MOS): 1st Violation $50 (default $50); 2nd Violation $100 (default $100); 3rd Violation $250 (default $250); 4th Violation $500 (default $1,000); 5th Violation $750 (default $1,000); 6th and subsequent Violation $1,000 (default $1,000).

A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an "MOS" penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation(s), and where the previous violation(s) was a violation of any section of law that is subject to an "MOS" penalty as indicated in this Penalty Schedule.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Unless otherwise indicated, all citations are to the NYC Administrative Code.

Section/Rule Description Penalty Default

Admin. Code 20-453* Unlicensed general vendor 250 1,000

Admin. Code 20-461(a) Failure to carry & exhibit license on demand MOS MOS

Admin. Code 20-461(b) Failure to wear license while vending MOS MOS

Admin. Code 20-462 Failure to notify DCA of change of info. on license application MOS MOS

Admin. Code 20-463 Failure to keep or produce required written record MOS MOS

Admin. Code 20-464(a) Failure to permit regular inspections MOS MOS

Admin. Code 20-464(b) Failure to provide name/address of supplier or place of storage MOS MOS

Admin. Code 20-464(c) Vending of prohibited merchandise MOS MOS

Admin. Code 20-464(d) Transfer of license without approval of Comm. MOS MOS

Admin. Code 20-465(a) Vending on sidewalk less than 12 ft. wide, or not at curb MOS MOS

Admin. Code 20-465(b) Using more than 8 ft. parallel to curb or 3 ft. from curb MOS MOS

Admin. Code 20-465(c) Stand or goods touching or leaning against building MOS MOS

Admin. Code 20-465(d) Stand or goods against display window or within 20 ft. of entrance MOS MOS

Admin. Code 20-465(e) Vending in bus stop, taxi stand or within 10 ft. of drive/subway/corner MOS MOS

Admin. Code 20-465(f) Violation of parking rules and regulations MOS MOS

Admin. Code 20-465(g) Vending in prohibited zone MOS MOS

Admin. Code 20-465(i) Vending on median strip not intended for mall or plaza MOS MOS

Admin. Code 20-465(j) Vending within Parks jurisdiction without Parks Comm. approval MOS MOS

Admin. Code 20-465(k) Failure to move after notice of exigent circumstances given MOS MOS

Admin. Code 20-465.1 Vending at times/places restricted by rule of Vendor Review Panel. MOS MOS

Admin. Code 20-466 Transfer of goods/vehicle/stand to unlicensed vendor MOS MOS

Admin. Code 20-465(m) Vending over ventilation grill, cellar door, manhole, transformer vault or subway access grating MOS MOS

Admin. Code 20-465(n) Display of goods on sidewalk surface, blanket, trash receptacle or board placed on sidewalk surface; display exceeding 5 feet in height from ground level; or less than 24 inches above sidewalk, or less than 12 inches above sidewalk where display is vertical. MOS MOS

Admin. Code 20-465(o) Vending from a parked motor vehicle MOS MOS

Admin. Code 20-465(p) Illegal use of electricity, electrical generating equipment, oil or gasoline powered equipment, machinery of any kind MOS MOS

Admin. Code 20-465(q) Vending within 20 ft. of sidewalk cafes; within 5 ft. of bus shelters, newsstands, public telephones, disabled access ramps; within 10 ft. of residental entrance or exit MOS MOS

Admin. Code 20-474.1 Unlicensed distribution of goods to a vendor MOS MOS

Admin. Code 20-474.2 Distributor's delivery vehicle without the required ID MOS MOS

6 RCNY 2-301 Failure to prove payment of taxes when renewing license MOS MOS

6 RCNY 2-302(a) Failure to notify DCA after 4 or more violations MOS MOS

6 RCNY 2-302(b) Failure to answer Notice of Violation/pay penalty within 30 days MOS MOS

6 RCNY 2-302(c) Failure to notify DCA of change of address or telephone number MOS MOS

6 RCNY 2-303(a) Failure to keep daily gross receipts record MOS MOS

6 RCNY 2-303(b) Failure to make records available to DCA MOS MOS

6 RCNY 2-302(d) Failure to notify DCA of supplier's address change MOS MOS

6 RCNY 2-304(a) Vending in road where parking/standing Prohibited MOS MOS

6 RCNY 2-304(b) Failure to comply with parking meter requirement MOS MOS

6 RCNY 2-304(c) Vending near fire hydrant or in safety zone MOS MOS

6 RCNY 2-305(a) Vending at street fair without exemption MOS MOS

6 RCNY 2-305(b) Vending violation at street fair MOS MOS

6 RCNY 2-306 Failure to move after notice of exigent circumstances given MOS MOS

6 RCNY 2-307(a) Misrepresentations concerning merchandise (Consumer Prot. Law) MOS MOS

6 RCNY 2-307(b) Failure to display price MOS MOS

6 RCNY 2-307(c) Failure to offer receipt for purchase MOS MOS

6 RCNY 2-307(d) Failure to retain receipts MOS MOS

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-109) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added (Note, identical to City Record June 20, 2005 addition) City Record Jan. 26, 2006 §3, eff. Feb. 25, 2006. [See T48 §3-107 Note 1]

Section added City Record June 20, 2005 §10, eff. July 20, 2005. [See T48 §3-101 Note 1]

Third undesignated par amended City Record Nov. 25, 2008 §11, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers

("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-110

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-110 Health Code and Miscellaneous Food Vendor Violations Penalty Schedule.

HEALTH CODE AND MISCELLANEOUS FOOD VENDOR

VIOLATIONS PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

NYC Health Code 81.07(a) Food not free of or protected against contamination 300 600

NYC Health Code 81.09 Potentially hazardous foods at improper temperatures 300 600

NYC Health Code 81.13(a) Food worker with communicable disease 300 600

NYC Health Code 81.15(a) Failure to have required Food Protection Certificate 500 1,000

NYC Health Code 81.07(l) Foods prepared or served with bare-hand contact 300 600

NYC Health Code 81.21(a) Plumbing inadequate 200 400

NYC Health Code 81.37(k) Garbage and trash improperly stored 200 400

NYC Health Code 81.27 Smoking, use of tobacco, or spitting 200 400

NYC Health Code 81.29(c) Handwashing facilities not provided 200 400

NYC Health Code 81.37(a) Cart, utensils, equipment unclean 200 400

NYC Health Code113.03(c)(2) or 113.07 Vending frozen desserts w/o appropriate permit(s) 1,000 2,000

NYC Health Code 181.17 Smoking in elevator, supermarket or assembly hall 200 400

NYC Health Code 81.07(i) Food from unapproved source 300 600

NYC Health Code 81.09(i) Appropriately scaled metal stem thermometer to evaluate food temps., not provided 300 600

NYC Health Code 81.08(a) Food containing artificial trans fat is stored/distributed/held for service/used in preparation of menu item or served 200 400

NYC Health Code 81.08(c) Original nutritional fact labels and/or ingredient labeling or acceptable manufacturers' documentation not maintained on site 200 400

NYC Health Code 81.13(b) Food worker not wearing hair restraint 200 400

NYC Health Code 81.19(b) Shatter proof or shielded light bulb not provided when required 200 400

NYC Health Code 81.19(c) Inadequate ventilation 200 400

NYC Health Code 81.23(a) Vermin, insects or other pests present 300 600

NYC Health Code 81.31 Equipment not clean; improperly maintained 300 600

NYC Health Code 81.37(a) Wiping cloth used on food contact surfaces not stored in sanitizing solution 300 600

NYC Health Code 81.50(c) Calorie content not posted for each menu item served in portions, size and content of which are standardized 200 400

NYC Health Code 81.50(c) Caloric content range not posted on menus and/or menu boards for each flavor/variety/size of each menu item offered for sale 200 400

NYC Health Code 81.50(c) Calorie content or range not posted for menu item offered as combination meal 200 400

NYC Health Code 81.50(c) Posted caloric content deficient in that size and/or font for posted calories not as prominent as name of the menu item or price 200 400

NYC Health Code 89.03(a) Operating a mobile food unit without a permit on private property 1,000 2,000

NYC Health Code 89.03(b) Unlicensed Vendors on private property 1,000 2,000

24 RCNY 6-01(l) Non-processing unit being operated without proper food processing permit 1,000 1,000

NYC Health Code 131.041 Failure to remove locking device from discarded refrigerator 200 400

NYC Health Code 131.11 Waste receptacles 200 400

NYC Health Code 139.05 Littering on public transport facility 200 400

NYC Health Code 139.07(a) Smoking on public transport facility 200 400

NYC Health Code 151.03(a) Rat Infestation 200 400

NYC Health Code 153.01 Littering 200 400

NYC Health Code 153.03 Agitation of materials prohibited 200 400

NYC Health Code 153.05 Inadequate precautions, construction/demolition 200 400

NYC Health Code 153.19 Dirty or obstructed sidewalk 200 400

NYC Health Code 153.07 Exposure of dirty rags, barrels, boxes 200 400

NYC Health Code 161.03 Control of dogs and other animals to prevent nuisance 200 400

NYC Health Code 161.05 Dogs to be restrained 200 400

NYC Health Code 161.04 Dog licenses-no tag on collar in public places 200 400

NYC Health Code 11.66 Owning or harboring a dog or cat which has not been immunized against rabies 500 1,000

NYC Health Code 161.01 Unlawfully keeping/selling/giving a wild animal 500 1,000

NYC Health Code 175.05(a) Excessive radiation exposure 200 400

NYC Health Code 175.52(a) Radiation installation without permit 200 400

NYC Health Code 181.03(a) Spitting 200 400

NYC Health Code Provision Miscellaneous NYC Health Code Provision-Miscellaneous Excluding NYC Health Code Sections Relating to Violations for Single Room Occupancies or to Lead Abatement. 200 400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-110) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended (Note, amendments identical to City Record June 20, 2005 amendments) City Record Jan. 26, 2005 §§4, 5, eff. Feb. 25, 2006. [See T48 §3-107 Note 1]

Section amended City Record June 20, 2005 §11, eff. July 20, 2005. [See T48 §3-101 Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par amended City Record Nov. 25, 2008 §12, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Schedule NYC Health Code 81.08(a) added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

Schedule NYC Health Code 81.08(c) added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

Schedule NYC Health Code 81.50(c) [Four entries] added City Record Oct. 10, 2008 §5, eff. Nov. 9, 2008. [See T48 §3-107 Note 2]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a

rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of

users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

156 of 198 DOCUMENTS

Rules of the City of New York

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

48 RCNY 3-111

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-111 Hazardous Materials Penalty Schedule.

HAZARDOUS SUBSTANCES EMERGENCY RESPONSE LAW

PENALTY SCHEDULE

All citations, unless otherwise indicated are to the NYC Administrative Code.

A second violation is a violation by the same respondent of the same section of law with a date of occurrence within three (3) years of the date of occurrence of the previous violation.

* The following shall be considered environmentally sensitive areas: wetlands and wetland buffer areas; National and State parks; critical habitats for endangered and threatened plant and animal species; wilderness and natural areas; marine sanctuaries; conservation areas; preserves; wildlife areas; scenic, wild or recreational rivers; seashore and lakeshore recreational areas; critical biological resource areas; National and State protected and critical environmental areas (CEAS) as defined in 6 NYCRR Section 617.2(i).

Section/Offense/Penalty Mitigating Factors (Cumulative) Aggravating Factor(Cumulative, up to a Total Penalty of $10,000) Default

24-609(b) 1st offenseFailed to comply with notification requirements upon release of hazardous substance $4,000

1. Subtract $500, if telephone within 24 hours. Telephone notification shall be found where respondent provided DEP with all of the telephone notification requirements as provided in 15 RCNY 11-03(b) within 24 hours of when respondent knows or has reason to know of a release.2. Subtract $500, if respondent did provide written notification. Written notification shall be found where respondent provided DEP with all of the written notification requirements as provided in 15 RCNY 11-03 (c).3. Subtract $1000, if began abating release within 3 hours of when respondent knew or had reason to know of a release. 1. Add $2,500, if release occurred within 1,000 feet of any of the following: residence district as defined by the New York City Zoning Resolution; school, highway, parkway or any other three lane roadway; environmentally sensitive area*; hazardous/toxic substance(s) industry/facility required to file under the New York City Community Right-to-know Law, Title 24 Chapter 7 of the New York Administrative Code.2. Add $2,500, if amount of release was equal to or greater than twice the Reportable Quantity.3. Add $2,500, if release caused actual injury to wildlife and/or human health.4. Add $2,500 if willful or intentional release of the listed hazardous substance. $10,000

24-609(b)2nd Offense$9,000 SAME AS ABOVE SAME AS ABOVE $10,000

24-610(c) 1st Offense willfully violated or failed or refused to comply with Commissioner's Order $3,000 1. Subtract $1,000, if complied with that portion of Scope of Work Order relating to securing of premises/building.2. Subtract $500, if complied with that portion of Scope of Work Order relating to identification of all hazardous substances. 1. Add $1,500, if failed to comply with that portion of Scope of Work Order relating to Bills of Lading and Hazardous Waste Manifests.2. Add $1,500, if total non-compliance, i.e. failed to comply with any part of Commissioner's Order. (In such cases, there could be no mitigating factors.) $10,000

24-610(c) 2nd Offense $4,500 SAME AS ABOVE SAME AS ABOVE $10,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-111) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

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Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

157 of 198 DOCUMENTS

Rules of the City of New York

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

48 RCNY 3-112

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-112 Health Code Lead Abatement Penalty Schedule.

HEALTH CODE LEAD ABATEMENT PENALTY SCHEDULE

This Health Code Lead Abatement Penalty Schedule is for the purpose of enforcing Notices of Violation returnable to ECB that were issued prior to December 13, 1999, and that cite sections of law set out in the Health Code Lead Abatement Penalty Schedule. Current lead-abatement violations are no longer returnable to ECB.

A second violation is a violation by the same respondent that is within the same category of this penalty schedule as the prior violation, and must have a date of occurrence that is within 2 years of the date of occurrence of the prior violation.

All citations are to the New York City Health Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description 1st Violation Penalty 2nd Violation Penalty Default

Filing Procedures

173.14(c)(1)(aa) Failure to file timely notice of start of abatement 450 900 1,000

173.14(c)(1)(bb) Failure to give required info on start of abatement notice 100 200 1,000

173.14(c)(1)(dd) No timely notice of change in notice of abatement 100 200 1,000

Recordkeeping

173.14(c)(3)(aa) Failure to make/keep records of abatement performed 300 600 1,000

173.14(c)(3)(bb) Failure to maintain environmental test results/records 300 600 1,000

173.14(c)(3)(cc) Failure to retain or permit inspection of records 300 600 1,000

Wet Scraping and Repainting

173.14(d)(1)(aa) Failure to use scraper/water mist to remove paint 300 600 1,000

173.14(d)(1)(bb) Failure to properly re-seal scraped surfaces 300 600 1,000

Removal

173.14(d)(2)(aa) Failure to remove paint by planing/chemical stripping 300 600 1,000

173.14(d)(2)(bb) Use of prohibited method of paint removal 450 900 1,000

Enclosure

173.14(d)(3)(aa) Failure to properly enclose walls 300 600 1,000

173.14(d)(3)(bb) Failure to properly enclose chewable surfaces 300 600 1,000

173.14(d)(3)(cc) Failure to tightly seal seams 300 600 1,000

173.14(d)(3)(dd) Failure to properly seal abated surfaces 300 600 1,000

173.14(d)(3)(ee) Use of enclosure method where not proper 300 600 1,000

Encapsulation

173.14(d)(4)(aa) Failure to properly prepare surfaces 100 200 1,000

173.14(d)(4)(bb) Use of unapproved encapsulant 100 200 1,000

173.14(d)(4)(cc) Use of improper material as encapsulant 100 200 1,000

173.14(d)(4)(dd) Use of encapsulation method where not proper 300 600 1,000

Replacement

173.14(d)(5) Improper replacement or removal 300 600 1,000

Abatement Area Preparation (Less than or equal to 6sf per room)

173.14(e)(2)(aa)(i) Failure to post warning signs/notices (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(ii) Failure to remove/cover movable objects (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(iii) Failure to cover floor prior to/during abatement (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(iv) Failure to correct conditions causing paint to peel (< 6sf) 300 600 1,000

173.14(e)(2)(aa)(v) Starting abatement prior to full area preparation (< 6sf) 100 200 1,000

173.14(e)(2)(aa)(vi) Failure to instruct occupants to avoid work area (< 6sf) 100 200 1,000

Abatement Area Preparation (More than 6sf per room)

173.14(e)(2)(bb)(i) Failure to post warning signs/notices 300 600 1,000

173.14(e)(2)(bb)(i) Failure to remove/cover movable objects 300 600 1,000

173.14(e)(2)(bb)(i) Failure to correct conditions causing paint to peel 300 600 1,000

173.14(e)(2)(bb)(i) Starting abatement prior to full area preparation 300 600 1,000

173.14(e)(2)(bb)(i) Failure to instruct occupants to avoid work area 300 600 1,000

173.14(e)(2)(bb)(ii) Failure to seal abatement area to prevent access 450 900 1,000

173.14(e)(2)(bb)(iii) Failure to isolate abatement area from other areas 450 900 1,000

173.14(e)(2)(bb)(iv) Failure to properly cover floor/movable objects 300 600 1,000

173.14(e)(2)(bb)(v) Failure to properly seal openings 300 600 1,000

Health and Safety

173.14(e)(3)(aa) Failure to minimize dispersal of lead 450 900 1,000

173.14(e)(3)(bb) Improper maintenance of flammable materials/data 100 200 1,000

173.14(e)(3)(cc) Failure to properly store/dispose of contaminated material 300 600 1,000

173.14(e)(3)(dd) Failure to properly isolate clean changing area 100 200 1,000

Daily Clean-up

173.14(e)(4)(aa) Failure to properly clean area daily 300 600 1,000

Final Clean-up

173.14(e)(4)(bb)(i) Failure to properly mist/sweep/remove poly sheeting 300 600 1,000

173.14(e)(4)(bb)(ii) Failure to properly HEPA vacuum surfaces 300 600 1,000

173.14(e)(4)(bb)(iii) Failure to properly wash surfaces 300 600 1,000

173.14(e)(4)(bb)(iv) Failure to properly perform second HEPA vacuuming 300 600 1,000

173.14(e)(4)(bb)(v) Failure to properly inspect/reclean abated surfaces 300 600 1,000

Final Inspection

173.14(e)(4)(cc) Failure to properly perform final inspection 450 900 1,000

Clearance for re-occupancy

173.14(e)(4)(dd) Allowed re-occupancy prematurely 450 900 1,000

173.14(e)(6) Failure to provide requested clearance dust test results 450 900 1,000

Miscellaneous

173.14 Miscellaneous violations 450 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-112) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par added City Record June 20, 2005 §13, eff. July 20, 2005. [See T48 §3-101 Note 1]

Fourth par amended City Record Nov. 25, 2008 §13, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

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In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included

within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-113

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-113 Hudson River Park Rules Penalty Schedule.

HUDSON RIVER PARK RULES PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to 21 NYCRR Part 751.

Section/Rule Description Penalty Default

751.4(a) Unauthorized presence in park when closed to public 50 200

751.4(b)(1) Failure to comply with directives of Police officer/Park employee 250 500

751.4(b)(2) Failure to comply with directions/prohibitions on signs 50 200

751.4(c) Failure to comply with orders of HRPT 250 500

751.5(h) Failure to have/ display/ comply with required permit 50 200

751.6(a) Injury/ defacement/ abuse of property or equipment 500 500

751.6(b)(1) Intentional destruction/ removal/ permanent damage to tree(s) 500 500

751.6(b)(1) Destruction/defacement/abuse of park vegetation 250 500

751.6(b)(2) Walking/permitting animal /child to walk on newly seeded grass 50 200

751.6(b)(3) Unauthorized entry/allowing entry into fenced/restricted area 50 200

751.6(b)(4) Unauthorized possession of gardening tool/plant 50 200

751.6(b)(5) Unauthorized use of metal detector 50 200

751.6(c) Littering or unlawful use of park waste receptacle 100 300

751.6(c)(2) Illegal discharge into park waters 250 500

751.6(c)(3) Unlawful dumping 500 500

751.6(c)(4) Storing/leaving unattended personal belongings 50 200

751.6(d) Possession of glass container in restricted area 50 200

751.6(e) Failure to comply with restrictions re: aviation 100 400

751.6(g)(1) Molest/kill/remove/ possess animal/ nest egg. etc. 500 500

751.6(g)(2) Unlawful feeding of animals 50 200

751.6(i) Unleashed or uncontrolled animals in park 100 200

751.6(i) Unleashed or uncontrolled animals in park-2nd Offense 200 400

751.6(i) Unleashed or uncontrolled animals in park-3rd Offense 300 500

751.6(i) Unleashed or uncontrolled animals in park-4th Offense 400 500

751.6(i) Unleashed or uncontrolled animals in park-5th Offense 500 500

751.6(j) Failure to comply with horseback riding restrictions 50 200

751.6(k) Fail to remove animal waste 50 100

751.6(l) Unlawful urination/ defecation in park 50 300

751.6(m)(1) Disorderly behavior involving entrance/exit onto park property 50 200

751.6(m)(2) Unlawful climbing on park property 50 200

751.6(m)(3) Failure to pay a fee/charge 50 200

751.6(p) Obstruction of benches, sitting areas 50 200

751.6(q) Unauthorized camping/ erection of tent or shelter 250 500

751.6(r) Spitting on park building/ monument/ structure or in the water 100 200

751.6(s) Unlawful use of fountain/pool/water/ for personal/ animal hygiene 50 200

751.6(u) Use of prohibited vessels,i.e. jet skis, cigarette boats, etc. 100 400

751.7(a)(1) Unauthorized special event/ demonstration without permit 250 500

751.7(a)(2) Unlawful erection of structure/stand/booth/platform/exhibit/artwork 250 500

751.7(b) Unauthorized vending 250 500

751.7(c) Unauthorized posting/ display of notices/ signs/ banners, etc. 50 200

751.7(d)(1) Unreasonable noise 350 500

751.7(d)(2) Unauthorized/un-permitted use of sound reproduction device 140 350

751.7(d)(3) Playing instrument/radio, etc. during unauthorized hours 140 350

751.7(d)(4) Unauthorized noise for advertising/ commercial purposes 500 500

751.7(e) Commercial/ Photo production without permit/ restricting access 250 500

751.7(f)(1) Unauthorized consumption/possession of alcoholic beverage 25 100

751.7(g) Failure to comply with bathing restrictions 50 200

751.7(h) Failure to comply with fishing restrictions 50 200

751.7(i) Failure to comply with bicycle riding restrictions 50 200

751.7(j) Planting/pruning/interfering with tree/vegetation without permit 50 200

751.7(k)(1) Failure to comply with restriction re:fires 50 200

751.7(k)(2) Unlawful disposal of flammable materials 50 200

751.7(m) Unauthorized construction/storage of materials 500 500

751.7(n) Unauthorized excavation 500 500

751.7(o) Failure to comply with area use restrictions 50 200

751.7(q) Unauthorized distribution or demonstration of products 100 400

751.7(r) Failure to comply with rollerblading/skating etc. Restrictions 50 100

751.8(a)(1) Operating/anchoring/mooring etc. boat in unauthorized area 500 500

751.8(b) Failure to operate a vessel in a safe/non-reckless manner 100 400

751.8(c) Operating a vessel without muffler that muffles noise in a reasonable manner 350 500

751.8(d) Prohibited use of vessels in an authorized swimming or wading area 100 400

751.8(e) Unlawful use of vessel 500 500

751.8(f) Use of excessive speed by vessel 50 200

751.8(g) Failure to remove sunken/disabled vessel 500 500

751.8(h) Unauthorized overnight occupancy of vessels 50 200

751.8(i) Interference with emergency vessel boarding 100 400

751.8(j)(1) Use of unauthorized toilets on vessel 250 500

751.8(j)(2) Unauthorized and non-emergency repair of vessels 100 400

751.8(j)(3) Failure to deposit garbage in designated receptacles 100 400

751.8(j)(4) Prohibited use /storage of welding machinery 50 250

751.8(l)(1) Failure to meet docking requirements/ altering docks 50 200

751.8(l)(2)(i) Mooring of a vessel in an unauthorized area 50 200

751.8(l)(2)(ii) Mooring of a vessel with improper/inadequate ties 50 200

751.8(m)(1) Improper maintenance of vessel or equipment 50 200

751.8(m)(2) Unauthorized structural modification on vessel 500 500

751.8(n) Failure to possess proper safety equipment on vessel 50 200

751.8(o) Unauthorized storage of dinghies, kayaks & canoes 50 250

751.8(p) Unauthorized boat launching 50 250

751.8(q) Use of non-motorized vessels in restricted areas 100 400

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-113) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

First par amended City Record Nov. 25, 2008 §14, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31

§§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City

Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-114

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-114 Landmarks Preservation Penalty Schedule.

LANDMARKS PRESERVATION PENALTY SCHEDULE

All Citations below are to the NYC Administrative Code.

The mitigation (Mitig.) is imposed where the cited illegal condition has been corrected by the first scheduled hearing date.

Section Description 1stoffensePenalty 1stoffenseMitig. 1stoffenseDefault 2ndoffensePenalty 2ndoffenseDefault

25-310 Work without or in violation of a Permit for Minor Work-Alteration to exterior architectural feature-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to storefront-Type A 1,500 750 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to interior landmark-Type A 1,000 500 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Modification of existing bulk of building-Type A

1,500 750 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Elimination of greenspace-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Alteration to non-building improvement-Type A 500 250 3,000 5,000 5,000

25-310 Work without or in violation of a Permit for Minor Work-Failure to submit periodic inspection reports-Type A 2,500 1,250 3,000 5,000 5,000

25-310 Work w/o or in violation of a Permit for Minor work (Type C) flag, signs, banners, awnings 250 125 500 500 500

25-310 Work w/o or in violation of a Permit for Minor work (Type C) Miscellaneous violations 100 50 500 500 500

25-322(b) Failing to notify lessee of Landmark status in Commercial space 250 125 500 500 500

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to exterior architectural feature-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to storefront-Type A 1,500 750 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to interior landmark-Type A 1,000 500 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Modification of existing bulk of building-Type A 1,500 750 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Elimination of greenspace-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Alteration to non-building improvement-Type A 500 250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect-Failure to submit periodic inspection reports-Type A 2,500 1,250 3,000 5,000 5,000

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect (Type C)-flag, signs, banners, awnings 250 125 500 500 500

25-305 Work w/o or in violation of a Certificate of Appropriateness or Certificate of No Effect (Type C)-Miscellaneous violations 100 50 500 500 500

25-311 Failure to maintain an improvement in good repair (Type B) 3,500 1,750 5,000 5,000 5,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-114) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Nov. 14, 2005 §1, eff. Dec. 14, 2005. [See Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 14, 2005:

The Environmental Control Board is making the following revisions to the ECB Penalty Schedules: (1) The Board is revising the Landmarks Preservation Penalty Schedule found in §3-114 of Subchapter G of Chapter 3 of Title 48, of the Rules of the City of New York. These revisions are made following enactment of Local Law 18 of 2005, which modifies the Landmarks Preservation Law by authorizing the Landmarks Preservation Commission to issue Notices of Violation for failure to maintain landmark structures in good repair. The revisions include re-designating former type "B" violations as type "C" violations, and creating a new type "B" violation for failure to maintain an improvement in good repair. Additionally, a second-offense penalty category is added to the various landmarks charges in order to provide a more effective deterrent and to encourage violators to bring their landmark buildings into compliance with the law; (2) The Board is revising the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include six new charges. These charges are for violations of already existing DOT rules and are being added to the ECB Penalty Schedule to enable DOT to cite these rules on their Notices of Violation. Three of the charges pertain to the storage of tool carts and three pertain to street operations. The toolcart charges apply when a toolcart is (a) stored on the roadway without a permit; (b) stored on the sidewalk without a five foot minimum walkway; and (c) stored on the sidewalk while obstructing a hydrant, bus stop, or driveway. The street operations charges apply in connection with (a) a failure to replace loose, slippery or broken utility maintenance hole covers or castings; (b) a failure to repair defective street conditions found within an area extending 12 inches outward from covers or gratings; and (c) illegally working on a street during an embargo period.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local

Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included

within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-115

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-115 Noise Code Penalty Schedule.

NOISE PENALTY SCHEDULE

All Citations are to the NYC Administrative Code except where the citation indicates that it is to the Rules of the City of New York (RCNY).

A stipulation (Stip) penalty is imposed if there is a "Y" (Yes) In the Stip column in the Penalty Schedule rather than a "N" (No), and if a stipulation is offered and accepted at a hearing.

Definition of 2nd and/or 3rd and/or 4th offense: By the same respondent of the same provision of law, order, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within two years).

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

* In connection with §24-231(a), a zero penalty may be imposed for admission for a first offense upon submission

to DEP (within 30 days of NOV issuance unless extended by DEP) of acceptable certification of compliance as set forth in §24-231(b)(1).

Section Description ViolationOffense Penalty Default Stip

10-108 Noise from sound device exceeding permit levels. 1st2nd3rd4th 2505007501000 2505007501000 NNNN

24-206(c) Failed to Comply with Commissioner's Order to Provide Access for Testing 1st2nd3rd 220440660 87517502625 NNN

24-207(c) Refused DEP entry into public area(s) of premises 1st2nd3rd 3507001050 87517502625 YNN

24-207(d) Refusal to allow authorized employee to perform sound testing. 1st2nd3rd 3507001050 87517502625 YNN

24-208 Operating equipment without a valid registration 1st2nd3rd 3507001050 87517502625 YNN

24-209 Interfering w/or obstructing DEP Personnel. 1st2nd3rd 3507001050 87517502625 YYN

24-210 False/misleading statements: unlawful repro/alteration of documents. 1st2nd3rd 3507001050 87517502625 NNN

24-211 Failure to post certificate or tunneling permit. 1st2nd3rd 3507001050 87517502625 YYN

24-216(d) Failure to comply with noise abatement contract requirements. 1st2nd3rd 65013001950 262552507875 YNN

24-218(a) Causing or permitting unreasonable noise (7AM to 10PM). 1st2nd3rd 3507001050 100020003000 YYN

24-218(a) Causing or permitting unreasonable noise (10PM to 7AM). 1st2nd3rd 4509001350 100020003000 YYN

24-218(e) Failure to comply with Commissioner's Order or mitigation measures re noise from refuse collection facility. 1st2nd3rd 3507001050 100020003000 YYN

24-218.1 Use of mobile telephones in a place of public performance. 1st2nd3rd 505050 505050 YYY

24-220(a) Failure to adopt/implement Noise Mitigation Plan for construction site. 1st2nd3rd 87517502625 140028004200 YNN

24-220(b) Inadequate/insufficiently detailed noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(b) Failure to ensure that all construction workers are familiar with noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(c) Failure to keep/have available for inspection copy of noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(d) Failure to amend noise mitigation plan. 1st2nd3rd 4408801320 140028004200 YNN

24-220(e) Failure to file noise mitigation plan when required. 1st2nd3rd 4008801320 140028004200 YNN

24-222 Construction activities at impermissible times/days. 1st2nd3rd 140028004200 3500700010500 YNN

24-223(b) Failure to submit certification for emergency work within 3 days of starting work. 1st2nd3rd

87517502625 3500700010500 YNN

24-223(d) Failure to respond to request for conference or to amend noise mitigation plan. 1st2nd3rd 87517502625 3500700010500 YNN

24-224 Construction work not in compliance with noise mitigation plan. 1st2nd3rd 140028004200 3500700010500 YNN

24-225(a) Sell/offer/operate/permit operation of refuse compacting vehicle producing excessive noise. 1st2nd3rd 56011201680 140028004200 YNN

24-225(b) Operate/cause operation of refuse compacting vehicle producing excessive noise (11PM to 7AM). 1st2nd3rd 70014002100 140028004200 YNN

24-226(a) Operating air compressor without appropriate muffler w/no exhaust leaks. 1st2nd3rd 56011201680 140028004200 YNN

24-226(b) Excessive noise from air compressor (measured @ 1 meter). 1st2nd3rd 56011201680 140028004200 YNN

24-226(c) Excessive noise from air compressor (measured @ receiving property). 1st2nd3rd 56011201680 140028004200 YNN

24-227(a) Noise from circulation device in excess of 42 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-227(b) Cumulative impact from circulation device exceeded 45 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-227(c) Failure to reduce cumulative impact from multiple circulation devices exceeding 50 dB(A). 1st2nd3rd 56011201680 87517502625 YNN

24-228 Unreasonable noise from construction devices. 1st2nd3rd 56011201680 140028004200 YNN

24-228.1 Unreasonable noise from engine exhaust. 1st2nd3rd 56011201680 87517502625 YNN

24-229 Unreasonable noise from handling/transporting of container or construction material. 1st2nd3rd 56011201680 140028004200 YNN

24-230(a) Operation/caused operation of paving breaker w/o pneumatic discharge muffler. 1st2nd3rd 56011201680 140028004200 YNN

24-230(b) Sold/offer for sale/operate/permit operation of paving breaker producing over 95 dB(A). 1st2nd3rd 56011201680 140028004200 YNN

24-231(a)* Made/caused/permitted music from commercial establishment in excess of permitted levels. 1st2nd3rd 320064009600 80001600024000 NNN

24-231(d) Violation of variance from limits set forth in 24-231(a) 1st2nd3rd 56011201680 87517502625 NNN

24-232(a) Excessive noise from sound source @ commerical or business establishment. 1st2nd3rd 56011201680 140028004200 NNN

24-233(a) Unreasonable noise: personal audio device. 1st2nd3rd 70140210 175350525 YYN

24-233(b)(1) Unreasonable noise-personal audio device (public right-of-way). 1st2nd3rd 140280420 175350525 YYN

24-233(b)(2) Unreasonable noise-personal audio device (motor vehicle). 1st2nd3rd 140280420 3507001050 YNN

24-234 Excess noise from sound reproduction device on rapid transit (subway, bus, ferry). 1st2nd3rd 70140210 175350525 YYN

24-235 Permitting animal to cause unreasonable noise. 1st2nd3rd 70140210 175350525 YYY

24-236(a) Excess noise from motor vehicles (10,000 lbs or less). 1st2nd3rd 210420840 52510501575 YNN

24-236(b) Excess noise from motorcycles. 1st2nd3rd 88017202600 144028004200 YNN

24-236(c) Excess noise from motor vehicles (10,000 lbs or greater). 1st2nd3rd 88017202600 144028004200 YNN

24-236(d) Non-emergency use of compression brake system. 1st2nd3rd 88017202600 144028004200 YNN

24-237(a) Unauthorized use of motor vehicle claxon. 1st2nd3rd 3507001050 100020003000 YYN

24-237(b) Unauthorized use of motor vehicle air horn/gong. 1st2nd3rd 3507001050 87517502625 YYN

24-237(c) Unauthorized use of steam whistle. 1st2nd3rd 3507001050 87517502625 YYN

24-237(d) Improper use of sound signal device (food vendor). 1st2nd3rd 3507001050 100020003000 YYY

24-238(a) Improper audible burglar alarm/no automatic termination. 1st2nd3rd 280560840 70014002100 YYN

24-238(b) Audible status indicator on motor vehicle in operation. 1st2nd3rd 280560840 70014002100 YYN

24-239(b) Vehicle owner failure to display owner's local precinct number. 1st2nd3rd 100200300 3507001050 YYN

24-241(a) Unauthorized use of emergency signal device. 1st2nd3rd 4408801320 140028004200 YNN

24-241(b) Failed to file certification regarding test of emergency signal device. 1st2nd3rd 4408801320 140028004200 YNN

24-242(a) Operating lawn care devices at unauthorized times or so as to create unreasonable noise. 1st2nd3rd 220440660 87517502625 YYY

24-242(b) Operation of leaf blower without muffler. 1st2nd3rd 220440660 87517502625 YYY

24-244(a) Unreasonable noise from sound reproduction device. 1st2nd3rd 4408801320 175035005250 YNN

24-244(b) Unreasonable noise from sound reproduction device for commercial/bus. advert. purposes. 1st2nd3rd 70014002100 175035005250 NNN

24-245 Failure to have operating certificate or tunneling permit. 1st2nd3rd 105021003150 262552507875 NNN

24-257(b)(7) Breaking of Board ordered seal. 1st2nd3rd 160016002480 400040004000 NNN

15 RCNY28-100 Failed to Conspicuously Post an Accurate and Complete Construction Noise Mitigation Plan (CNMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(a) Failed to Self-Certify Equipment Maintenance in CNMP 1st2nd3rd 220440660 87517502625

YNN

15 RCNY28-101(a) Failed to Exercise Noise Mitigation Option within 5 Business Days of Construction Tool Exceeding Noise Standard 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(b) Failed to Equip Construction Equipment with Noise Reduction Device 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(c) Failed to Mitigate Noise From Internal Combustion Engine 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(d) Failed to Cover Compressors/Generators/Pumps with Noise-Insulating Fabric 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(g) Failed to Use Perimeter Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(h) Failed to Create and Utilize Noise Mitigation Training Program 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(i) Failed to Coordinate Work Schedule with Sensitive Facility Receptor 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-101(j) Failure to Comply with CNMP or File Alternative Plan w/in 3 Days of Inspection 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(l) Failed to Utilize Temporary Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-101(m) Failed to Utilize Noise Barrier on Sandblasting Perimeter Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(ii) Failed to Use Specified Pile Driver When Working w/in 100 ft of Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(iii) Failed to Equip Pile Driver w/Exhaust Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(v) Failed to Pre-Augur/Pre-Trench Pile Holes 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(1)(B)(vi) Failed to Properly Secure Impact Cushions to Piles 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(1)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(B)(iii) Failed to Equip Jackhammer With Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(C)(i) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(2)(C)(ii) Exceeded Maximum Height of 15 Feet for Free-Standing Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(b) Failed to Use Multiple Tents for Multiple Jackhammers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(c) Failed to Move Noise Tents as Jackhammer Work Progresses 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(d) Failed to Use Double Layer of Mitigation During Emergency Jackhammering w/in 500 ft of Residential Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(2)(C)(iii)(e) Failed to Use Tents on Either Side of Jackhammer Where Surrounded by Receptors 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(3)(B)(iii) Failed to Wrap Noise Shroud Around Head of Hoe Ram w/in 200 ft of Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(3)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(a)(4)(C)(i) Failed to Lay Heavy Rubber Blast Mats Over Blast Site 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(a)(4)(C)(ii-iii) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(b)(1)(B)(iv) Failed to Cover Vac-Truck's Suction Component w/Noise-Reducing Enclosure 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(b)(1)(C)(i-iv) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(c)(1)(B)(ii) Failed to Install Bed Liner 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(c)(1)(B)(v) Failed to Equip Truck with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(c)(1)(B)(vii) Failed to Keep Housing Doors Closed During Engine Operation 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(c)(1)(C)(i-iii) Failed to Properly Construct Portable Noise Barrier 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(1)(B)(v) Failed to Equip Crane with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(i) Failed to Equip Auger Drill Rig with Effective Muffler 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(ii) Failed to Lubricate All Moving Parts of Auger Drill Rig 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(2)(B)(iii) Failed to Properly Clear Debris from Drill Bits 1st2nd3rd 4408801320 87517502625 YN N

15 RCNY 28-102(d)(2)(C)(i-iv) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(d)(3)(A)(i) Failed to Properly Install Street Plates 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(d)(4)(A)(i)(a-c) Failed to Equip Work Vehicles with Proper Backup Alarms 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(d)(4)(B)(ii-iv) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(e)(1)(C)(i-iii) Failed to Properly Construct Portable Noise Barriers 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(iv) Failed to Use Multiple Tents During Use of Multiple Concrete Saws 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(v) Failed to Move Noise Tent as Concrete Saw Work Progressed 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-102(e)(1)(C)(vi) Failed to Use Double Layer of Mitigation for Noise Barrier During Emergency Concrete Sawing within 500 ft of Residential Receptor 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY 28-102(e)(1)(C)(vii) Failed to Use Two Tents on Either Side of Saw When Surrounded by Receptors 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-104 Failed to File Alternative Noise Mitigation Plan (ANMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-105 Failed to Conspicuously Post Utility Noise Mitigation Plan (UNMP) 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(a) Failed to Self-Certify Equipment Maintenance in UNMP 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(a) Failed to Exercise Noise Mitigation Option within 5 Days of Construction Tool Exceeding Noise Standard 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(b) Failed to Equip Construction Tool with Noise Reduction Device 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106 (c) Failed to Comply with Additional Noise Mitigation Measures for Specialized Vehicles 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(d) Failed to Cover Equipment with Noise-Insulating Fabric 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(h) Failed to Properly Install and Secure Street Plates 1st2nd3rd 4408801320 87517502625 YNN

15 RCNY28-106(i) Failed to Notify Residents within 200 Feet of Construction Activity 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(j) Failed to Respond to Noise Complaints/Notice from DEP 1st2nd3rd 220440660 87517502625

YNN

15 RCNY28-106(l) Failed to Create and Utilize Noise Mitigation Training Program 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(m) Failed to Coordinate Work Schedule with Sensitive Receptor Owner 1st2nd3rd 220440660 87517502625 YNN

15 RCNY28-106(n) Failed to Correct Excessive Noise Condition/File ANMP 1st2nd3rd 4408801320 87517502625 YNN

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-115) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record May 4, 2007 §1, eff. June 3, 2007. [See Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Open par amended City Record Dec. 12, 2007 §1, eff. Jan. 11, 2008. [See Note 2]

Fourth par amended City Record Nov. 25, 2008 §15, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Fifth undesig. par (*In connection . . . §24-231(b)(1)) amended City Record Nov. 1, 2007 §3, eff. Dec. 1, 2007. [See T48 §3-120 Note 1]

15 RCNY 28-100-15 RCNY 28-106(n) added City Record Dec. 12, 2007 §2, eff. Jan. 11, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 4, 2007:

The Environmental Control Board (ECB) had a Public Hearing on April 12, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the Noise Control Penalty Schedule and to the Water Code Penalty Schedule. The Board has adopted the following revisions to those two Penalty Schedules:

1) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the promulgation of the new Noise Control Code that was signed into law (Local Law 113 of 2005) on December 21, 2005. That law becomes effective on July 1, 2007. Accordingly, the revised Noise Code Penalty Schedule adopted by this Final Rule becomes effective on July 1, 2007. This new law repeals many previously existing sections of law pertaining to noise control and puts into place new provisions that make the Noise Control Code more effective and responsive to the needs of the City. The primary focus of the new Code is the reduction of the overall sound level in the City.

In addition to continuing the current Noise Control Code's prohibition on after-hours and weekend construction, Subchapter 4 of the new Noise Control Code ("Construction Noise Management") contains detailed requirements which

require all construction sites to have a noise mitigation plan setting forth the noise mitigation strategies, methods, procedures and technologies to be employed for each device or activity at the site. The current Code section relating to commercial music sources has been strengthened by lowering the threshold from 45 dB(A) to 42 dB(A) as measured in any dwelling unit, and by adding a provision dealing with measuring sound in the dB(C) weighting network. In connection with §24-231(a), the new code also contains a provision which allows the Department of Environmental Protection to recommend a zero penalty in cases where the respondent admits the violation and timely submits a report, pursuant to the requirements set forth in §24-231(b)(1), showing that modifications have been made which bring the establishment into full compliance with the Code, along with measurements confirming that compliance has been achieved. The current Code section regarding circulation device noise has been strengthened by lowering the threshold from 45 dB(A) to 42 dB(A) as measured three feet from the open window of any dwelling unit. The new Code also restricts noise from multiple circulation devices owned by the same entity and allows the Department of Environmental Protection to order owners to implement remedial actions when the cumulative sound level from existing multiple devices exceeds 50 dB(A). For new installations of multiple circulation devices or for a new addition to a cluster of circulation devices, the cumulative permitted sound level is 45 dB(A). The new Code includes a "plainly audible" standard for personal audio devices, sound reproduction devices, animals and motor vehicles. Also, the prohibition against unreasonable noise has been strengthened by the establishment of sound levels which are considered to be unreasonable per se, e.g., any sound source which increases the ambient sound level by ten dB(A) or more (7 dB(A) at night) when measured at a distance of fifteen feet or more.

Regarding §24-218.1, "Use of mobile telephones in a place of public performance," this provision of law was previously enacted, by Local Law 9 of 2003, and is now being added to this amended Noise Code Penalty Schedule.

2) The Board has revised the Water Code Penalty Schedule found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the repeal of the Drought Emergency Rules and the re-promulgation of those Rules (Title 48, Chapter 21 of the Rules of the City of New York (RCNY). The new Rules took effect on September 7, 2006. It should be noted that there are no changes to that portion of the Water Penalty Schedule that does not pertain to the Drought Emergency Rules. In other words, there are no changes to the part of the Water Penalty Schedule that is entitled "Other Water Regulations," since those sections are not drought-related. Among reasons for the repeal and re-promulgation of those Rules was that the Department of Environmental Protection, in light of recent experiences with the drought, recognized that amendments to the Drought Emergency Rules were needed. The amended Rules are streamlined and simplified. Redundancy has been omitted and inconsistencies eliminated. Definitions have been added for greater clarity and conformance with general style of RCNY rules. The Rules have been amended to provide greater flexibility and consistency for water usage during the various stages of drought.

The principal changes from the current Penalty Schedule are that section numbers have been changed under the new Rules; improper use of well water, which was previously a violation only in Stage III, is now a violation in Stage I and II as well; infractions for air conditioning or refrigeration units without approved water conservation devices, dumping cooling tower water, and failure to reduce non-residential use of water by specified percentages are no longer included in the Penalty Schedule, as these violations do no exist under the new Rules.

2. Statement of Basis and Purpose in City Record Dec. 12, 2007: The Environmental Control Board (ECB) had a Public Hearing on November 29, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to take into account the promulgation of the City of New York Department of Environmental Protection's Rules concerning citywide construction noise mitigation. These Rules were enacted in light of Local Law 113 of 2005, which amended the Administrative Code of the City of New York in relation to the Noise Control Code. Specifically, the law established standards and procedures to reduce noise levels from construction, and established sound level standards for specific noise sources. The law also mandated, in §24-219 of the Administrative Code, the adoption of rules by the Department of Environmental

Protection. These new Rules establish the requirement that contractors develop and implement Noise Mitigation Plans prior to performing construction work within the City. These new Rules describe acceptable work hours, after-hour restrictions, and requirements for the use of noise barriers around construction sites, as well as establishing noise emission criteria limits for all generic types of construction equipment in accordance with new Federal Highway Administration guidelines. These Rules prescribe the methods, procedures and technology that shall be used at construction sites to achieve noise mitigation whenever any one or more of certain construction devices or activities set forth in the Rules are employed or performed. The penalties set out in the Board's revised Noise Code Penalty Schedule for violations of the DEP Rules fall into two categories, namely, (1) violations pertaining to failure to comply with general administrative requirements (e.g., posting of plan, worker training, notification filings), and (2) failure to comply with specific noise mitigation requirements. The proposed penalties for the second category are double those for the first category, since these will be violations of specific noise mitigation requirements and are therefore likely to result in actual increase in noise levels. 2) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend that Penalty Schedule to clarify that citations to the Rules of the City of New York, as well as citations to the Administrative Code, are now included in the Penalty Schedule as a result of the inclusion in that Penalty Schedule of charges pertaining to the recently enacted New York Department of Environmental Protection's Rules concerning citywide construction noise mitigation. 3) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to amend one charge and to add eight new charges. All these charges pertain to the theft of recyclables and solid waste. These charges have been amended and added in light of the enactment of Local Law 50 of 2007, which pertains to the unauthorized collection or removal of solid waste and recyclable materials. Among other things, this law makes it a violation for a person operating a motor vehicle to unlawfully remove or transport recyclables from the residential curb without the building owner's authorization. In buildings containing more than three dwelling units, the owner's authorization must be evidenced in writing and filed with the Sanitation Commissioner. Local Law No. 50 also makes it a violation for a person operating a motor vehicle to unlawfully remove recyclable materials placed at the curb by commercial establishments, and premises occupied by city agencies and institutions that receive DSNY collection service. This law also makes it a violation for persons, other than a not-for-profit corporation, to receive recyclable materials for storage, collection or processing from anyone other than an authorized DSNY employee or agent; employee of a company licensed by or registered with the New York City Business Integrity Commission; a not-for-profit organization; or a person who has entered into a written agreement to remove recyclables pursuant to this Local Law. The law itself, in §16-118(7)(f)(1)(i) of the New York City Administrative Code, imposes flat penalties for each level of offense for violations of §16-118(7)(b)(1) (if the violation of §16-118(7)(b)(1) is in connection with the use of a motor vehicle in connection with the transporting of recyclables), §16-118(7)(b)(2), §16-118(7)(c), and §16-118(7)(d), rather than a range of dollar amounts. However, the Board is including these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. By contrast, the penalties for §16-118(7)(b)(1), if the violation of §16-118(7)(b)(1) was not in connection with the use of a motor vehicle, and also the penalties for §16-118(7)(b)(3), do have a statutory range, set by §16-118(9). 4) The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that (1) For §§10-119 and 10-120 and 16-308(g) and 16-308(h) and 16-404 and 16-405(a) and 16-405(b), and 16-118(7)(b)(2) and 16-118(7)(d), a repeat violation is a violation by the same respondent of the same section of law as the previous violation, where the previous violation has a date of occurrence within twelve months of the date of occurrence of the present violation; (2) Any person who violates §16-118(7)(b)(1) and/or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, is considered a repeat violator where the same respondent has violated either §16-118(7)(b)(1) or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative

Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-116

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-116 Parks Rules Penalty Schedule.

PARKS RULES PENALTY SCHEDULE

A repeat violation is a violation is by the same respondent of the same Parks rule with a date of occurrence within 4 years of the date of occurrence of the previous violation.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

56 RCNY 1-03(a)(3) Unauthorized presence in park when closed to public 50 200

56 RCNY 1-03(b)(6) Failure to have/display/comply/with required permit 50 200

56 RCNY 1-03(c)(1), 3-19 Failure to comply with directives of officer/park employee 250 1,000

56 RCNY 1-03(c)(2) Failure to comply with directions/prohibitions on signs 50 200

56 RCNY 1-04(a) Injury/defacement/abuse of Department's property or equipment 500 2,000

56 RCNY 1-04(b)(1)(i) Intentional destruction/removal/permanent damage to tree 1,000 4,000

56 RCNY 1-04(b)(1)(ii) Destruction/defacement/abuse of park vegetation 250 1,000

56 RCNY 1-04(b)(2) Walking/permitting animal/child to walk on newly seeded grass 50 200

56 RCNY 1-04(b)(3) Unauthorized entry/allowing entry into fenced/restricted area 50 200

56 RCNY 1-04(b)(4) Unauthorized possession of gardening tool/plant 50 200

56 RCNY 1-04(c)(1), 3-08(e) Littering or unlawful use of park waste receptacle 100 300

56 RCNY 1-04(c)(2) Polluting waters within park 250 1,000

56 RCNY 1-04(c)(3) Unlawful dumping 1,000 4,000

56 RCNY 1-04(c)(4) Storing/leaving unattended personal belongings 50 200

56 RCNY 1-04(d) Possession of glass container in restricted area 50 200

56 RCNY 1-04(g)(1) Molest/kill/remove/possess animal/nest/egg, etc. 1,000 4,000

56 RCNY 1-04(g)(2) Unlawful feeding of animals 50 200

56 RCNY 1-04(i), 3-18(d) Unleashed or uncontrolled animals in park 100 200

56 RCNY 1-04(j)(1), 3-18(b) Fail to remove canine waste 250 250

56 RCNY 1-04(j)(2) Horse-carriage without horse hamper/control for horse waste 100 400

56 RCNY 1-04(k) Unlawful urination/defecation in park 50 300

56 RCNY 1-04(l)(1-3) Unlawful entry to or climbing on park property 50 200

56 RCNY 1-04(o) Obstruction of benches, sitting areas 50 200

56 RCNY 1-04(p) Unauthorized camping 250 1,000

56 RCNY 1-04(q) Spitting on park building/monument/structure 100 200

56 RCNY 1-04(r) Unlawful use of fountain/pool/water/for personal/ animal hygiene 50 200

56 RCNY 1-05(a)(1, 3) Unauthorized assembly/exhibition/parade, etc. w/o permit 250 1,000

56 RCNY 1-05(b) Unauthorized vending 250 1,000

56 RCNY 1-05(c) Unauthorized posting/display of notices/ signs/banners, etc 50 200

56 RCNY 1-05(d)(1) Unreasonable noise 350 875

56 RCNY 1-05(d)(2) Operating speaker device/sound amplifier without require permit 140 350

56 RCNY 1-05(d)(3) Playing instrument/radio, etc.during unauthorized hours 140 350

56 RCNY 1-05(d)(4) Unauthorized noise for advertising/commercial purposes 700 1,750

56 RCNY 1-05(e) Commercial cinematic production without permit 250 1,000

56 RCNY 1-05(f) Unauthorized consumption/possession of alcoholic beverage 25 100

56 RCNY 1-05(g) Failure to comply with bathing restrictions 50 200

56 RCNY 1-05(h) Failure to comply with fishing restrictions 50 200

56 RCNY 1-05(i) Failure to comply with bicycle riding restrictions 50 200

56 RCNY 1-05(j) Failure to comply with boating restrictions 50 200

56 RCNY 1-05(k) Failure to comply with ice skating restrictions 50 200

56 RCNY 1-05(l) Planting tree/flower/shrubbery/other vegetation without permit 50 200

56 RCNY 1-05(m)(1) Failure to comply with restriction re: fires 50 200

56 RCNY 1-05(m)(2) Unlawful disposal of flammable materials 50 200

56 RCNY 1-05(o) Unauthorized construction/storage of materials 1,000 4,000

56 RCNY 1-05(p) Unauthorized excavation 1,000 4,000

56 RCNY 1-05(q) Failure to comply with horseback riding restrictions 50 200

56 RCNY 1-05(r) Failure to comply with area use restrictions 50 200

56 RCNY 1-05(t) Unauthorized distribution or demonstration of products 100 400

56 RCNY 1-05(u) Failure to comply with rollerblading/skating restrictions 50 100

56 RCNY 3-05,4-03 Interference with emergency vessel boarding 100 400

56 RCNY 3-06(a), 3-17, 4-04(a) Failure to have/display/comply with required permit 50 200

56 RCNY 3-08(a), 4-06(a) Use of unauthorized toilets on vessel 250 1,000

56 RCNY 3-08(b), 4-06(b) Illegal discharge onto docks/water/walkways etc. 250 1,000

56 RCNY 3-08(d), 4-06(d) Unreasonable noise 350 875

56 RCNY 4-07(a),(b) Mooring fails to meet requirements 50 200

56 RCNY 3-10(a) Improper maintenance of vessel or equipment 50 200

56 RCNY 3-10(b) Unauthorized structural modification on vessel 500 2,000

56 RCNY 4-09 Excessive speed in mooring area 50 200

56 RCNY 3-12(a), 4-10 Failure to possess proper safety equipment on vessel 50 200

56 RCNY 3-13(a) Unauthorized interference with electrical supply in marina 250 1,000

56 RCNY 3-15, 4-11 Failure to remove sunken vessel 500 2,000

56 RCNY 3-16(b) Unauthorized launch or storage of kayak or canoe 50 200

56 RCNY 3-20, 4-14 Unlawful use of vessel 500 2,000

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-2nd offense 200 400

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-3rd offense 400 800

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-4th offense 700 1,400

56 RCNY 1-04(i); 3-18(d) Unleashed or uncontrolled animal in Park-5th offense 1,000 2,000

56 RCNY 1-04(b)(1)(i) Destruction of tree branch/pruning without permit/minor tree abuse 100 400

56 RCNY 1-04(b)(1)(i) Major damage to/accidental destruction of a tree 500 2,000

56 RCNY 1-04(b)(5) Unauthorized possession of metal detector 50 200

56 RCNY chapter 3 Miscellaneous violation of rules regarding 79 St. Marina 50 200

56 RCNY chapter 4 Miscellaneous violation of rules regarding moorings 50 200

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-116) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §16, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table 56 RCNY 1-04(b)(1)(i) "Major damage . . . tree" amended City Record Mar. 2, 2007 §9, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 56 RCNY 1-04(j)(1), 3-18(b) amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 2009:

The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of the Parks Rules Penalty Schedule found in §3-116 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to increase the penalty for the charge of §§1-04(j)(1) and 3-18(b) of Title 56 of the RCNY. Both sections charge failure to remove canine waste. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing.

Specifically, the Board has revised §1-04(j)(1) which provides that "No person shall allow any dog in his custody

or control to discharge any fecal matter in any park unless he promptly removes and disposes of same. This provision shall not apply to a guide dog accompanying a person with a disability." Section 3-18(b) provides that, in connection with the West 79th Street Boat Basin, the Sheepshead Bay Piers and the World's Fair Marina, "The owner or other person in charge or control of a pet shall expeditiously remove, clean or clear all feces or vomit deposited by the pet from the walkways and docks." The Board has increased the hearing penalty for these two Sections of law from $50 to $250, and has increased the default penalty for these two sections of law from $100 to $250.

The Board has increased these penalties in order to make the penalties for §§1-04(j)(1) and 3-18(b) equivalent to the penalty for a violation of the New York State Public Health Law §1310, commonly known as the "Pooper Scooper" law. Section 1310 has a hearing and default penalty of $250 and is also enforced at ECB. That charge is found in ECB's Public Health Law Penalty Schedule, 48 RCNY 3-117. The $250 penalty for §1310 is the result of an amendment to §1310 made by Chapter 153 of the Laws of 2008.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-117

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-117 Public Health Law Penalty Schedule.

PUBLIC HEALTH LAW PENALTY SCHEDULE

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section Description Penalty Default

NYS Public Health Law 1310 Failure to remove canine waste 100 100

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-117) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Opening par amended City Record Nov. 25, 2008 §17, eff. Nov. 25, 2008 per City Record notice.

[See T48 §3-12 Note 1]

Table NYS Public Health Law 1310 amended City Record Nov. 1, 2007 §4, eff. Dec. 1, 2007. [See

T48 §3-120 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 2008:

The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Public Health Law Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

The Board has revised the Public Health Law Penalty Schedule found in §31-117 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to increase the penalty for the charge of NYC Public Health Law Section 1310 (the "Pooper Scooper" law), "Failure to remove canine waste," from a penalty of $100 to a penalty of $250.

This is to take into account the new penalty amount for canine waste violations that is authorized by recent legislation that amended §1310 of the New York State Public Health Law. Governor David Paterson signed that legislation on July 7, 2008 as Chapter 153 of the Laws of 2008. That law becomes effective ninety (90) days after it was signed by the Governor.

Under the old law, persons who failed to remove canine waste were subject to a fine of one hundred dollars. The new law raises the maximum penalty associated with canine waste from the previous maximum of one hundred dollars to a new maximum of two hundred fifty dollars. In order to implement the statutory intent of this new legislation, the Board has increased the penalty for the charge of failing remove canine waste from the current one hundred dollar penalty to two hundred fifty dollars.

The Board has amended the Public Health Law Penalty Schedule to ensure that this penalty increase becomes effective as of the effective date of the law.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the

statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective

on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-118

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-118 Public Pay Telephones Penalty Schedule.

PUBLIC PAY TELEPHONES PENALTY SCHEDULE

Unless otherwise indicated all citations are to the New York City Administrative Code.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalties for these charges for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

23-402 Install/Operate/Maintain Public Pay Telephone without permit 900 1,000

23-402 Install/Operate/Maintain Public Pay Telephone in violation of permit terms 500 1,000

23-405 Impermissible advertising on Public Pay Telephone 900 1,000

23-408(b) Repeated failure to provide services for a sustained period 2,000 2,500

23-408(b) Failure to provide coinless 911 service 2,000 2,500

67 RCNY 6-24(c) False statement/info in a certification/registry 900 1,000

67 RCNY 6-26(a) Failure to remove Public Pay Telephone after failure to submit registry 900 1,000

67 RCNY 6-26(b) Failure to remove Public Pay Telephone per requirements of subsection 500 1,000

67 RCNY 6-41 Failure to adhere to siting/clearance/pedestrian passage requirements as per subsection 500 1,000

67 RCNY 6-05(a)* Failure to provide coinless access to 911 on a twenty-four hour daily basis 2,000 2,500

67 RCNY 6-05(b)* Failure to provide working Public Pay Telephone and operator services 2,000 2,500

67 RCNY 6-05(c)* Failure to clean/maintain Public Pay Telephone as per requirements of subsection 250 1,000

67 RCNY 6-05(d) Failure to correct, repair or restore broken, fractured, detached or displaced PPT within 72 hours period 900 1,000

67 RCNY 6-06* Impermissible display of advertising on Public Pay Telephone installation 900 1,000

67 RCNY 6-36(b)(1),(d)* Failure to remove Public Pay Telephone as per Commissioner's Order 500 1,000

67 RCNY 6-42* Required sign missing/impermissible as per requirements of subsection 250 1,000

67 RCNY 6-43* Failure to comply with installation/maintenance standards as per requirements of subsection 500 1,000

67 RCNY Chapter 6* Miscellaneous violation of rules pertaining to Public Pay Telephones 250 1,000

Title 23, Ch.4* Miscellaneous violation of code pertaining to Public Pay Telephones 250 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-118) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §18, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table 67 RCNY 6-05(d) added City Record Mar. 2, 2007 §6, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 67 RCNY 6-05(d)(3) deleted City Record Mar. 2, 2007 §7, eff. Apr. 1, 2007. [See §3-103 Note 2]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food

vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-119

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-119 Public Safety Graffiti Penalty Schedule.

PUBLIC SAFETY GRAFFITI PENALTY SCHEDULE

The following citations are to the NYC Administrative Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

A.C. 10-117(a) Unlawful defacement of property by graffiti (except with stickers or decals) 100 500

A.C. 10-117(b) Unlawful possession of aerosol spray paint can/indelible marker 100 500

A.C. 10-117(c) Offer/sale of aerosol spray paint can/indelible marker to minor 100 500

A.C. 10-117(d) Unlawful display of aerosol spray paint can/indelible marker 100 500

A.C. 10-117.3 Failure to remove graffiti 150 300

A.C. 27-4047(a) Use or discharge of fireworks without permit 750 750

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-119) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section aded City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second par amended City Record Nov. 25, 2008 §19, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Table A.C. 10-117.3 added City Record Oct. 13, 2006 §7, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

Table A.C. 27-4047(a) added City Record Aug. 16, 2007 §2, eff. Sept. 15, 2007. [See §15-122 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-120

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-120 Recycling-Sanitation Collection Rules Penalty Schedule.

RECYCLING-SANITATION COLLECTION RULES PENALTY SCHEDULE

A repeat violation is a violation by the same respondent, at the same place of occurrence, of any of the recycling rules or provisions, having a date of occurrence within 12 months of the date of occurrence of the previous violation.

Persistent violator: As is set forth in §16-324 of the Administrative Code, a person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of five hundred dollars for each violation. For a persistent violation only, except where such violation occurws at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period.

The default penalty for any each charge in this Penalty Schedule is the same as the penalty for that particular charge.

Section/Rule Description Penalty

Residential Premises

16 RCNY 1-08(e)(1),(2)AR01, AR12, AR23 Improper/misused curbside recycling container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(e)(3)AR02, AR13, AR24 Improper/misused mechanized recycling container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(1)AR03, AR14, AR25 Failure to post notices/inform about recycling 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(2)(i)AR04, AR15, AR26 No accessible recycling storage area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(f)(2)(iii)AR05, AR16, AR27 Inadequate recycling containers in storage area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(1)AR06, AR17, AR28 Improper disposal of recyclables/misuse of container 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(2)AR07, AR18, AR29 Failure to clean recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(g)(3)AR08, AR19, AR30 Failure to bundle newspapers/magazines/cardboard 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(1)(2)AR09, AR20, AR31 Failure to properly put recyclables out for collection 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(4)AR10, AR21, AR32 Non-recyclables left in recycling container for collection 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-08(h)(5)AR11, AR22, AR33 Recyclables placed for collection with non-recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY §1-08(i)AR1A, AR2A, AR3A(Persistent Violator: AR4A) Failure to comply with Commissioner's Order mandating the use of clear plastic bags for the disposal of refuse and recycling. 1st Violation:2nd Violation:3rd Violation: 2550100

PersistentViolator (fourth or subsequent violation within six months 500

Institutions/Agencies

16 RCNY 1-09(d)AR34, AR38, AR42 Failure to establish recycling program 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(g)(1)(i)AR35, AR39, AR43 Failure to notify employees about recycling program 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(g)(1)(iii)AR36, AR40, AR44 Recycling containers not provided/not labeled 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-09(h), (i), (j)AR37, AR41, AR45 Failure to source separate designated recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

Private Carter Collected Waste

16 RCNY 1-10(c)(1)AR46, AR63, AR80 Failure to source separate non-food/beverage recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(c)(2)AR47, AR64, AR81 Failure to source separate food/beverage recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(c)(3)AR48, AR65, AR82 Failure to source separate residential recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(d)(2)AR49, AR66, AR83 No agreement with carter for mixed materials 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(d)(3)AR50, AR67, AR84 Failure to post commingling notice 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(e)AR51, AR68, AR85 Failure to maintain source separation 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(i)AR52, AR69, AR86 No written recycling agreement 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(ii)AR53, AR70, AR87 No written recycling notice to tenants/employees 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(iii)AR54, AR71, AR88 Recycling notices not posted in maintenance area 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(1)(iv)AR55, AR72, AR89 Recycling containers missing 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(2)(i)AR56, AR73, AR90 Failure to source separate recyclables 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(f)(2)(ii),(iv)AR57, AR74, AR91 Failure to notify employees/post notices/label Containers 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(1)AR58, AR75, AR92 Failure by Transfer Station to recycle 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(2)AR59, AR76, AR93 Failure to maintain separation of paper (transfer stations) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(3)AR60, AR77, AR94 Failure to separate commingled metal, glass plastic (transfer stations) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(5)AR61, AR78, AR95 Failure to separate components of construction waste (transfer station) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

16 RCNY 1-10(g)(6),(7)AR62, AR79, AR96 Improper disposal of recyclables or commingled materials (transfer station) 1st Violation2nd Violation3rd Violation 2550100

PersistentViolator (fourth or subsequent violation within six months) 500

NYC Admin. Codesec. 16-324(a)AR97 Persistent Violator, recycling PersistentViolator (fourth or subsequent violation within six months) 500

HISTORICAL NOTE

Section amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 2]

Section repealed and reissued (former T15 §31-120) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Residential Premises

16 RCNY 1-08(h)(4) so designated (former 16 RCNY 1-08(h)(3) City Record Jan. 28, 2008 §6, eff.

Feb. 27, 2008. [See T48 §3-103 Note 5]

16 RCNY 1-08(h)(5) so designated (former 16 RCNY 1-08(h)(4) City Record Jan. 28, 2008 §6, eff.

Feb. 27, 2008. [See T48 §3-103 Note 5]

16 RCNY 1-08(i) added City Record Nov. 1, 2007 §1, eff. Dec. 1, 2007. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 1, 2007:

The Environmental Control Board (ECB) had a Public Hearing on September 27, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

(1) The Board has revised the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new charge in that Penalty Schedule for a violation of 16 RCNY 1-08(i), "Failure to comply with Commissioner's Order mandating the use of clear plastic bags for the disposal of refuse and recycling." This new charge is being added to ensure that the goals of the City's new twenty (20) year Solid Waste Management Plan are met.

The Department of Sanitation has been focusing its attention on apartment buildings (nine dwelling units or more) that place recyclables out for collection on a non-recycling collection day by mixing separated recyclables with regular refuse in black bags placed out for Department of Sanitation collection. The Department of Sanitation has sent letters to those buildings that have been engaging in this practice that they must address this matter immediately and place designated recyclables out for collection in clear plastic bags (or labeled containers) on the scheduled recycling collection day and store designated recyclables until the next designated recycling collection.

If recycling violations persist, a Department of Sanitation supervisor in charge of the collection area for apartment

buildings with nine dwelling units or more will issue a clear bag notice as authorized in 16 RCNY §1-08(i) directly to the building manager or superintendent requiring that after a specific date all refuse and recyclables from the building must be set out in clear plastic bags as a precondition for continued Department of Sanitation collection. After that date, materials set out for Department of Sanitation collection in anything other than a clear plastic bag will be issued a Notice of Violation by the Department of Sanitation, per bag, for improper set out. The purpose for requiring the use of clear plastic bags for all waste material is to enable the Department of Sanitation to monitor recycling compliance before Department of Sanitation collection. The clear bag requirement for all discarded waste will be imposed upon any building that the Department of Sanitation deems to be a persistent recycling violator under the law and will remain in effect for as long as necessary to ensure proper compliance with recycling regulations.

This new charge will allow the Department of Sanitation to enforce against those buildings that fail to comply with the Commissioner's Order mandating the use of clear plastic bags for the disposal of both refuse and recycling.

The law itself, in §16-324(a) of the New York City Administrative Code imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board is including these penalties in the Recycling-Sanitation Collection Rules Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(2) The Board has revised the Buildings Penalty Schedule found in §3-103 of Subchapter G of Title 48 of the Rules of the City of New York to add one new charge to the Buildings Penalty Schedule for a violation of §27-205 of the Administrative Code, "Failure to grant entry to premises to inspect work-HAZARDOUS." Addition of this charge to the penalty schedule will enable the enforcement of the provisions of §27-205, which provides that the Department of Buildings may enter at reasonable times any building, enclosure or premises, or signs or service equipment attached thereto, for the purpose of determining compliance with the provisions of the Building Code and other applicable laws. Unchecked, faulty construction could have serious ramifications to public safety and building infrastructure. Therefore, it is important to enable enforcement of this charge.

(3) The Board has revised the Noise Code Penalty Schedule found in §3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following text at the top of the penalty schedule to read as follows: "*In connection with §24-231(a), a zero penalty may be imposed for admission for a first offense upon submission to DEP (within 30 days of NOV issuance unless extended by DEP) of acceptable certification of compliance as set forth in §24-231(b)(1)." This new text was already included in a prior published final rule that was published on May 4, 2007, in the City Record, which amended the Noise Code Penalty Schedule. However, in that prior published final rule, inadvertently this new text was not underscored so as to indicate that it was new material being added to the Noise Code Penalty Schedule. Accordingly, this text is being included in this final rule in order to clarify that this text is indeed additional material.

(4) The Board has revised the Public Health Law Penalty Schedule found in §3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to increase the penalty for the charge of NYC Public Health Law §1310 (the "Pooper Scooper" law), "Failure to remove canine waste," from a penalty of $50 to a penalty of $100. This is to encourage New Yorkers to comply with §1310, which requires dog owners to pick up after their dogs. Canine waste is not only an unsightly nuisance, it can also pose a health hazard if it is not cleaned up. This penalty is being increased to serve as a more effective deterrent to those who do not pick up after their dogs as required by this law.

2. Statement of Basis and Purpose in City Record May 14, 2009: The Environmental Control Board (ECB) had a Public Hearing on April 15, 2009 on proposed revisions of the Recycling-Sanitation Collection Rules Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to (i) add a "Persistent Violator" penalty of $500 to each recycling charge in that Penalty Schedule that does not already have such a penalty, and (ii) to add the definition of "Persistent Violator" to a headnote at the beginning of that Penalty Schedule. One private citizen was present to offer testimony into the public record. No written comments were submitted. The Board has considered the testimony offered at the hearing. The Board has amended the Recycling-Sanitation Collection Rules

Penalty Schedule found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to (i) add a "Persistent Violator" penalty of $500 to each recycling charge in that Penalty Schedule that does not already have such a penalty, and (ii) to add the definition of "Persistent Violator" to a headnote at the beginning of that Penalty Schedule. The imposition of a $500 penalty for persistent violations is authorized by §16-324(a) of the NYC Administrative Code. Pursuant to §16-324(a), a persistent violator is a person who has committed four or more violations within six months of a section of law found in Chapter Three of the NYC Administrative Code or a rule or regulation promulgated pursuant to that Chapter. In some instances, each container or bag of solid waste may result in a separate "persistent violator" charge. Details are set forth in the excerpt from §16-324(a) below:

". . . . For a persistent violation only, except where such violation occurs at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period. Before issuing any further notice of violations to a persistent violator after the fourth violation within a period of six months, the commissioner shall give such violator a reasonable opportunity to correct the condition constitution the violation."

The Penalty Schedule already includes a separate charge for §16-324(a) itself, "Persistent Violator, recycling." Adding the persistent violator penalty of $500 and the definition of persistent violator to each separate recycling charge will enhance the Department of Sanitation's efforts in issuing Notices of Violation to persistent violators. The Board has added the persistent-violator $500 penalty next to each entry in the Recycling-Sanitation Collection Rules Penalty Schedule and a description of the basis for that penalty, to read as follows: "Persistent Violator (fourth or subsequent violation within six months)." The Board also has added a more detailed definition of "persistent violator" to a headnote at the top of the Penalty Schedule, to read as follows: Persistent violator: As is set forth in §16-324 of the Administrative Code, a person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of five hundred dollars for each violation. For a persistent violation only, except where such violation occurs at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination

because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil

service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified

in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

166 of 198 DOCUMENTS

Rules of the City of New York

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

48 RCNY 3-121

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-121 Sanitation Asbestos Rules Penalty Schedule.

SANITATION ASBESTOS RULES PENALTY SCHEDULE

Worker Penalty: Where the Hearing Officer finds that the respondent is a worker (defined as an individual employee working under the direction of another whose job duties permit no exercise of judgment or discretion), the penalty will be $500.00.

Second offense is defined as a violation by the same respondent of any provision of the rules found in 16 RCNY Chapter 8, or of Section 16-117.1 of the NYC Administrative Code, where the date of occurrence of the current violation is within two years of the date of the prior violation.

All citations are to 16 RCNY Chapter 8.

Rules Description Penalty BasicPenalty Aggravating Circumstances Mitigation

VisibleEmissionor AdultExposure ChildExposure NoKnowledge SmallQuantity

PRESENT FOR STORAGE OF ASBESTOS WASTE:

8-03(a)(1) Not Wet 1st 4,000 8,000 9,000 -1,000 -500

2nd 5,000 10,000 11,000 N/A -1,000

8-03(a)(2) Uncontained, unsealed 1st 7,000 14,000 15,000 -2,000 N/A

2nd 8,000 16,000 18,000 N/A N/A

8-03(a)(2) Not 6 mil 1st 5,000 10,000 11,000 -2,000 -1,000

2nd 6,000 12,000 14,000 N/A -1,000

8-03(a)(2) No Warning Label 1st 1,000 N/A N/A -500 -200

2nd 1,500 N/A N/A N/A -500

8-03(a)(3) Mixed w/ other waste 1st 5,000 10,000 11,000 -2,000 -1,000

2nd 6,000 12,000 14,000 N/A -1,000

STORAGE OF ASBESTOS WASTE:

8-04(a)(1) Uncontained, unsealed 1st 12,000 24,000 25,000 -4,000 N/A

2nd 14,000 25,000 25,000 N/A N/A

8-04(a)(1) Not wet, not 6 mil 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 11,000 22,000 24,000 N/A -2,000

8-04(a)(1) No warning label 1st 2,000 N/A N/A -1,000 -500

2nd 3,000 N/A N/A N/A -500

8-04(a)(2) No 24 hour inspection 1st 2,000 4,000 N/A -1,000 -500

2nd 3,000 6,000 N/A N/A -500

8-04(a)(3) Inadequate spare leak-tight containers 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A -500-500

8-04(a)(4) Inadequate water supply 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A -500-500

8-04(a)(5) Mixed with other waste 1st 7,000 14,000 15,000 -2,000 -1,000

2nd 8,000 16,000 18,000 N/A -1,000

8-04(a)(6) Unsecured area 1st 6,000 N/A N/A -2,000 -1,000

2nd 7,000 N/A N/A N/A -1,000

8-04(b) 50 cu. yds/no authorization 1st2nd 3,0004,000 N/AN/A N/AN/A -1,000N/A N/AN/A

8-04(b)(1)(i) 50 cu. yds/ noinspection records 1st2nd 2,0003,000 5,0006,000 N/AN/A -1,000N/A N/AN/A

PRESENT FOR TRANSPORT ASBESTOS WASTE:

8-05(a) Uncontained, unsealed 1st 14,000 25,000 25,000 -4,000 N/A

2nd 16,000 25,000 25,000 N/A N/A

8-05(a) Not wet, not 6 mil 1st 12,000 24,000 25,000 -4,000 -2,000

2nd 14,000 25,000 20,000 N/A -2,000

8-05(a) No warning label 1st 3,000 N/A N/A -1,000 -500

2nd 4,000 N/A N/A N/A -500

8-05(b) Without inspection 1st 3,000 6,000 7,000 -1,000 -500

2nd 4,000 8,000 9,000 N/A -500

8-05(c) Mixed with other waste 1st 8,000 16,000 18,000 -2,000 -1,000

2nd 9,000 18,000 20,000 N/A -2,000

8-05(d)(1) Transporter w/o DEC permit 1st2nd 3,0004,000 N/AN/A N/AN/A N/AN/A N/AN/A

8-05(d)(2) Transporter w/o DCA permit 1st2nd 3,0004,000 N/AN/A N/AN/A N/AN/A N/AN/A

TRANSPORT ASBESTOS WASTE:

8-06(a) Uncontained, unsealed 1st 16,000 25,000 25,000 -5,000 N/A

2nd 18,000 25,000 25,000 N/A N/A

8-06(a) Not wet, not 6 mil 1st 12,000 24,000 25,000 -4,000 -2,000

2nd 14,000 25,000 25,000 N/A -2,000

8-06(a) No warning label 1st 4,000 N/A N/A -1,000 -500

2nd 5,000 N/A N/A N/A -1,000

8-06(b) No examination, unsafe packaging 1st2nd 4,0005,000 8,00010,000 9,00011,000 -1,000N/A -500-1,000

8-06(c) Inadequate spare leak-tight containers 1st2nd 4,0005,000 N/AN/A N/AN/A -1,000N/A -500-1,000

8-06(d) Inadequate water supply 1st2nd 4,0005,000 N/AN/A N/AN/A -1,000N/A -500-1,000

8-06(e) Mixed with other waste 1st 9,000 18,000 20,000 -4,000 -2,000

2nd 10,000 20,000 22,000 N/A -2,000

8-06(f) Unprotected container 1st 9,000 18,000 20,000 -4,000 -2,000

2nd 10,000 20,000 22,000 N/A -2,000

8-06(g) Lacking DEC permit 1st 4,000 N/A N/A N/A N/A

2nd 5,000 N/A N/A N/A N/A

8-06(h) Lacking DCA permit 1st 4,000 N/A N/A N/A N/A

2nd 5,000 N/A N/A N/A N/A

PRESENT FOR DISPOSAL ASBESTOS WASTE

8-07(a) Unapproved site 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 12,000 24,000 25,000 N/A -2,000

8-07(b) Non-compliance w/ order 1st2nd 9,00010,000 18,00020,000 20,00022,000 N/AN/A N/AN/A

8-07(c) Uncontained, unsealed 1st 18,000 25,000 25,000 -6,000 N/A

2nd 20,000 25,000 25,000 N/A N/A

8-07(c) Not wet, not 6 mil 1st 16,000 25,000 25,000 -5,000 -3,000

2nd 18,000 25,000 25,000 N/A -3,000

8-07(c) No warning label 1st 5,000 N/A N/A -2,000 -1,000

2nd 6,000 N/A N/A N/A -1,000

8-07(d) No examination, unsafe repackaging 1st2nd 5,0006,000 10,00012,000 11,00014,000 -2,000N/A -1,000-1,000

8-07(e) Mixed with other waste 1st 10,000 20,000 22,000 -4,000 -2,000

2nd 12,000 24,000 25,000 N/A -2,000

ABANDONMENT:

8-08 Abandonment ofAsbestos waste 1st2nd 20,00022,000 25,00025,000 25,00025,000 -6,000N/A -4,000-4,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-121) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and

(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including

31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-122

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-122 Sanitation Penalty Schedule.

SANITATION PENALTY SCHEDULE

Unless otherwise indicated, all citations are to the New York City Administrative Code.

* For sections 16-118(2) and 16-122(b), a repeat violation requires 12 prior violations by the same respondent of either of these two provisions of law that have a date of occurrence within the 12 months preceding the date of occurrence of the current violation, where the violations have the same place of occurrence.

** For sections 16-118(1),(3),(4),(6), and 16-120(a),(b),(c),(d),(e), and 16-123, a second or third violation is a violation by the same respondent of the same provision of law as the previous violation with a date of occurrence within 12 months of the date of occurrence of the previous violation.

*** For §§10-119 and 10-120 and 16-308(g) and 16-308(h) and 16-404 and 16-405(a) and 16-405(b), and 16-118(7)(b)(2), and 16-118(7)(d), and 16-453(b), 16-453(c), 16-454(b), and 16-454(c), a repeat violation is a violation by the same respondent of the same section of law as the previous violation with a date of occurrence within twelve months of the date of occurrence of the previous violation.

Any person who violates §16-118(7)(b)(1) and/or §16-118(7)(c) while using or operating a motor vehicle, or

owning said motor vehicle, is considered a repeat violator where the same respondent has violated either §16-118(7)(b)(1) or §16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

Any person who violates §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) is considered a repeat violator where the same respondent has violated §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

**** For section 16-119, a repeat violation is a violation by the same respondent of the same section of law as the previous violation with a date of occurrence within 18 months of the date of occurrence of the previous violation.

***** For these transfer-station related sections, a repeat violation is a violation by the same respondent of the same subdivision of the same section of law or rule as the previous violation with a date of occurrence within 3 years of the date of occurrence of the previous violation.

****** For these medical-waste related sections, a repeat violation is a violation by the same respondent occurring within 18 months of the date of occurrence of the previous violation.

******* Per day penalties will begin to accrue from the date of the occurrence as set forth on the Notice of Violation. Such per day penalty will continue to accrue until the Respondent either can prove a date specific that the violation has been corrected or until the first scheduled hearing date, which will be set for sixty days from the date of occurrence. For each notice of violation issued, the per day penalty imposed shall not exceed sixty days.

With the exception of §10-119 (posting on a tree), and§16-119, and §16-422, §16-423, §16-426(a), §16-426(b), and §16-428(a), and sections 16-453(b); 16-453(c); 16-454(b), and 16-454(c), pursuant to §3-81(b) a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

******** For §16-130 (b) and 16 RCNY §4-44, a repeat violation is a second or subsequent violation by the owner of a premises or of equipment, vehicles or other personal property, committed in a period of three years by any person using or operating the same, in the business of such owner or otherwise, with permission, express or implied, of such owner. As used in this paragraph, "owner" means a person, other than a holder of a security interest, having the property in or title to premises or equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of premises or equipment, vehicles or other personal property subject to a security interest in another person and also including any lessee or bailee having exclusive use thereof.

Section/Rule Description Penalty Default

16-116(a) Removal of commercial waste 100 100

16-116(b) Posting of sign/permit 100 100

16-118(1)** Littering 1st 100 450

2nd 250 450

3rd 350 450

16-118(1)** Sweep out 1st 100 450

2nd 250 450

3rd 350 450

16-118(1)** Throw out 1st 100 450

2nd 250 450

3rd 350 450

16-118(2)(a)* Dirty sidewalk 100 300

16-118(2)(a)* Dirty area 100 300

16-118(2)(a)* Sidewalk obstruction 100 300

16-118(2)(a)* Failure to clean 18" into street 100 300

16-118(2)(b)* Dirty sidewalk (vacant lot) 100 300

16-118(2)(b)* Dirty area (vacant lot) 100 300

16-118(2)(b)* Sidewalk obstruction (vacant lot) 100 300

16-118(2)(b)* Failure to clean 18" into street (vacant lot) 100 300

16-118(3)** Dust or substances flying 1st 100 450

2nd 250 450

3rd 350 450

16-118(4)** Spilling from truck or receptacle 1st 100 450

2nd 250 450

3rd 350 450

16-118(6)** Noxious liquids 1st 100 450

2nd 250 450

3rd 350 450

16-118(7)(a) Interfering with DOS employee 100 300

16-118(7)(b)(1) Unauthorized disturbance or removal of recyclable materials (no motor vehicle used) 100 300

§16-118(7)(f)(1)(i)*** Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Owner) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(1)*** Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Operator) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(2)*** Failure to submit to DSNY a report indicating the amount, by weight, of recyclable materials removed from residential premises or vacant lots by February 1st or August 1st of every year 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(2)*** Submission of report to DSNY stating the amount of recyclable materials removed from residential premises or vacant lots containing false or deceptive information 1st2nd 2,0005,000 2,0005,000

§16-118(7)(b)(3) Unauthorized disturbance or removal of solid waste 100 300

§16-118(7)(f)(1)(i)*** Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle. (Owner) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(c)*** Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle (Operator) 1st2nd 2,0005,000 2,0005,000

§16-118(7)(d)*** Receipt of recyclable materials for storage, collection or processing that is collected by unauthorized personnel 1st2nd 2,0005,000 2,0005,000

16-119**** Illegal dumping (Operator of vehicle) 1st 1,500 10,000

16-119**** Illegal dumping (Operator of vehicle) 2nd 5,000 10,000

16-119**** Illegal dumping (Operator of vehicle) 3rd 10,000 20,000

16-119**** Illegal dumping (Operator of vehicle) 4th 15,000 20,000

16-119**** Illegal dumping (Operator of vehicle) 5th 20,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 1st 1,500 10,000

16-119**** Illegal dumping (Owner of vehicle) 2nd 5,000 10,000

16-119**** Illegal dumping (Owner of vehicle) 3rd 10,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 4th 15,000 20,000

16-119**** Illegal dumping (Owner of vehicle) 5th 20,000 20,000

16-120(a)** Maintaining receptacles 1st 100 300

2nd 100 300

3rd 200 300

16-120(b)** Separation and weight 1st 100 300

2nd 100 300

3rd 200 300

16-120(c)** Storage of receptacles 1st 100 300

2nd 100 300

3rd 200 300

16-120(d)** Loose rubbish 1st 100 300

2nd 100 300

3rd 200 300

16-120(e)** Improper use of DSNY litter basket 1st 100 300

2nd 250 350

3rd 350 400

16-123** Snow, ice & dirt removal 1st 100 350

2nd 150 350

3rd 250 350

16-127(a) Earth, rocks and rubbish 100 150

16-122(b)* Street obstruction 100 150

16-122(c) Disabled vehicle 100 150

16-118(2)* Failure to sweep 18" from curb 100 300

16-120.1****** Improper disposal of infectious/medical waste 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16-117.1 Improper transport/storage/disposal of asbestos waste 1,000 10,000

16-117.1 Hazardous transportation/storage disposal of asbestos waste 10,000 10,000

10-119*** Illegal posting of handbill/notice 1st 75 200

2nd 150 200

10-120*** Defacement of City handbill/notice 1st 75 200

2nd 150 200

10-119/120*** Illegal posting/defacement of handbill (2nd offense) 150 300

10-117(a) Illegal placement of stickers or decals on public or private property 150 500

10-119*** Posting on tree 1st 150 200

2nd 300 550

16-130(b)***** Operating a nonputrescible solid waste transfer station without a permit 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY 4-04 etseq.***** Comm.'s transfer station Rule Re: nonputrescible waste 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)***** Operating a putrescible waste transfer station without a permit. 1st2nd3rd 2,5005,00010,000

10,00010,00010,000

16 RCNY 4-11 etseq.***** Comm.'s transfer station Rule Re: putrescible waste 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)***** Operating dump/fill without a permit 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16 RCNY3-02 et seq.***** Comm's Rule Re: Dump/fill operation 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY4-32,33,34***** Violation of transfer station Rules re: siting/hours/reports/plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-130(b)******** Operating an intermodal solid waste containerfacility without a registration 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(c)******** Failure to handle intermodal containers in a safe and sanitary manner. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(g)******** Failure to maintain solid waste received at the facility for transports in intermodal containers. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(h)******** Failure of intermodal containers to meet the specification requirements set forth in 16 RCNY 4-43. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(i)******** Failure to maintain and/or provide records. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(j)******** Failure to remove intermodal containers containing putrescible waste within 72 hours of receipt. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY4-44(l)******** Failure to store equipment within the property lines. 1st2nd3rd $2,500$5,000$10,000 $10,000$10,000$10,000

16 RCNY 1-04 Improper disposal of regulated household waste 100 250

16 RCNY 5-06(a)(3) Vehicle Body-Improper color 250 500

16 RCNY 5-06 Misc. Violation of vehicle body specifications 250 500

16-120.1(d) Improper disposal of regulated household waste 50 250

16-120.1(e)****** Failure to file DEC medical waste plans 1st 2,500 10,000

2nd 5,000 10,000

3rd 10,000 10,000

16-120.1(f))****** Failure to file DEC medical waste plans/amended plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-120.1(e) or(f) Late filing of medical waste plans or reports within 30 days as per 16-120.1(i)(6) 100 250

16 RCNY11-02(a)****** Failure to file DEC Medical Waste Plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16 RCNY11-02(b)****** Failure to File Medical Waste Plans/Amended Plans 1st2nd3rd 2,5005,00010,000 10,00010,00010,000

16-122(b)* Repeat violation 100 150

16-118(2)* Repeat violation 250 300

16 RCNY 11-02(a),(b) Late Filing of Medical Waste Plans or Reports Within 30 days as per 16 RCNY 11-02(c) 100 250

NYS General BusinessLaw §397-a Placement of unsolicited advertisements on private property in a manner contrary to sign authorized by General Business Law §397-a. 250 250

16-208(g)*** Improper receptacle for yard waste (Resident) 1st2nd3rd 2550100 2550100

Persistent Violator (fourth and any subsequentviolation within a period of six months from theissuance of the first violation): 500 500

16-308(h)*** Improper dispersal of yard waste (Business Generating Yard Waste) 1st2nd3rd 2501,0002,500 2501,0002,500

16-308(h)*** Improper disposal of yard waste (Business Generating Yard Waste) 1st2nd3rd 2501,0002,500 2501,0002,500

16-327(a) Failure to dispose of solid waste and recyclable materials properly $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(1) Failure to provide sufficient number of refuse and recycling receptacles for street event $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(2) Spillage condition from overflowing receptacle $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(3) Failure to properly bag and/or bundle refuse and recyclables $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-327(b)(4) Failure to place bagged and/or bundled refuse and recyclables at predetermined location $100 per violationMaximum: Up to $500 per day or $2,000 per street event. $100 per violationMaximum: Up to $500 per day or $2,000 per street event.

16-404*** Improper Disposal of Rechargeable Battery 1st2nd3rd 50100200 50100200

16-405(a)*** Failure to Comply with Rechargeable Battery Recycling Program Requirements (Retailer) 1st2nd3rd 200400500 200400500

16-405(b)*** Failure to Comply with Rechargeable Battery Recycling Program Requirements (Battery Manufacturer) 1st2nd3rd 2,0004,0005,000 2,0004,0005,000

§16-422 Failure of manufactureer to accept covered electronic equipment or orphan waste pursuant to manufacturer's electronic waste management plan. $2,000 per piece of covered electronic equipment or orphan waste. $2,000 per piece of covered electronic equipment or orphan waste.

§16-423******* Failure of a manufacturer to submit initial electronic waste management plan to DSNY. $1,000 per day $60,000

§16-423******* Failure of manufacturer to submit a valid electronic waste management plan to DSNY after it has been disapproved by DSNY more than two times. $1,000 per day $60,000

§16-426(a) Improper disposal by person of electronic equipment as solid waste. $100 $100

§16-426(b) Improper disposal by manufacturer of electronic equipment as solid waste. $1,000 $1,000

§16-428(a)******* Failure of manufacturer to submit annual report by July 1st of each calendar year. $1,000 per day $60,000

§16-428(a) Submission of annual report by manufacturer that contains false or misleading information. $10,000 $10,000

16-453(a)(1) Providing plastic bags without recycling message 300 per day 9,000

16-453(a)(2) Failure to provide a bin for the collection of plastic 300 per day 9,000

16-453(a)(2) Failure to clearly mark a bin for the collection of plastic 300 per day 9,000

16-453(a)(3) Failure to recycle plastic bags and film plastic 300 per day 9,000

16-453(a)(5) Failure to sell reusable bags 300 per day 9,000

16-453(b)*** Failure to maintain plastic bag and film recycling records 1st2nd3rd 1007001,000 1007001,000

16-453(c)*** Failure to submit an annual report (Operator) 1st2nd3rd 1007001,000 1007001,000

16-454(a) Failure to make arrangements for the collection, transport and recycling 500 per day 15,000

16-454(b)*** Failure to submit an annual report (Manufacturer) 1st2nd3rd 1001,0001,500 1001,0001,500

16-454(c)*** Failure to provide educational materials 1st2nd3rd 1001,0001,500 1001,0001,500

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-122) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

*** For sections 10-119 . . . previous violation (fourth paragraph amended (inadvertently omitting part of City Record May 9, 2008 amendment) City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

*** For sections 10-119 . . . previous violation (fourth paragraph) amended, fifth paragraph amended City Record May 9, 2008 §1, eff. June 8, 2008. [See Note 2]

*** For sections 10-119 . . . previous violation (fourth paragraph) amended, fifth paragraph added City Record

Dec. 12, 2007 §4, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

***For sections 10-119 . . . previous violation (fourth paragraph) amended City Record Aug. 16, 2007 §3, eff. Sept. 15, 2007. [See Note 1]

Any person . . . previous violation (fifth paragraph) amended City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

Any person . . . previous violation (fifth paragraph) amended City Record May 9, 2008 §1, eff. June 8, 2008. [See Note 2]

Any person . . . previous violation (fifth paragraph) added City Record Dec. 12, 2007 §4, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

Any person . . . previous violation (sixth paragraph) added City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 4]

*******Per day . . . sixty days (tenth paragraph) added City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 5]

With the exception . . . respondent (eleventh paragraph) amended City Record Nov. 25, 2008 §20, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]. Note: This amendment omitted part of City Record Oct. 10, 2008 amendment.

With the exception . . . respondent (eleventh paragraph) amended City Record Oct. 10, 2008 §3, eff. Nov. 9, 2008. [See Note 5]. Note: This amendment inadvertently omitted part of City Record May 9, 2008 amendment.

With the exception . . . respondent (eleventh paragraph) amended City Record May 9, 2008 §2, eff. June 8, 2008. [See Note 2]

********For §16-130(b) . . . thereof (closing par) added City Record Dec. 23, 2009 §1, eff. Jan. 22, 2010. [See Note 6]

Table 16-130(b) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(c) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(g) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(h) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(i) added added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(j) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16 RCNY 4-44(l) added City Record Dec. 23, 2009 §2, eff. Jan. 22, 2010. [See Note 7]

Table 16-118(2) [three entries] amended to be 16-118(2)(a)(b) [six entries] City Record Oct. 13, 2006 §6, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

Table 16-118(2)(a) Dirty Sidewalk amended City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(a) Dirty Area amended City Record Aug. 16, 2007 §4, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(b) Dirty Sidewalk amendeed City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(2)(b) Dirty Area amended City Record Aug. 16, 2007 §5, eff. Sept. 15, 2007. [See Note 1]

Table 16-118(7)(b) entries amended/added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115 Note 2]

Table §16-118(7)(b)(1)*** amended City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 4]

Table 16-118(c)*** added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115

Note 2]

Table §16-118(7)(c)*** amended City Record Oct. 10, 2008 §2, eff. Nov. 9, 2008. [See Note 4]

Table 16-118(d)*** added City Record Dec. 12, 2007 § 3, eff. Jan. 11, 2008. [See T48 §3-115

Note 2]

Table 16-120(e) amended City Record Oct. 31, 2007 §1, eff. Nov. 30, 2007. [See T48 §3-124

Note 1]

Table NYS General Business Law §397-a added City Record July 2, 2008 §1, eff. Aug. 1, 2008. [See Note 3]

Table 16-208(g) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-308(h) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-308(h) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-327(a) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(1) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(2) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(3) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-327(b)(4) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 6]

Table 16-404 amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-405(a) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table 16-405(b) amended City Record Aug. 16, 2007 §6, eff. Sept. 15, 2007. [See Note 1]

Table §16-422 added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-423******* (2 entries) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See

Note 5]

Table §16-426(a) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-426(b) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-428(a)******* added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table §16-428(a) added City Record Oct. 10, 2008 §1, eff. Nov. 9, 2008. [See Note 5]

Table 16-453 entries (7) added City Record May 9, 2008 §3, eff. June 8, 2008. [See Note 2]

Table 16-454 entries (3) added City Record May 9, 2008 §3, eff. June 8, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 16, 2007:

The Environmental Control Board (ECB) had a Public Hearing on July 19, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB Penalty Schedules as set forth above.

(1) The Board has revised §3-100, "General," found in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to add new text at the end of that section clarifying the fact that some of the penalties in the ECB Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York are penalties that were set as flat penalties by law. Thus, for some of the penalties in the ECB Penalty Schedules, there is no range of penalties set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, ECB is including these flat penalties in the Penalty Schedules set forth in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(2) The Board has revised the Public Safety Graffiti Penalty Schedule found in §3-119 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add to that Penalty Schedule one new charge for Administrative Code §27-4047(a), "Use or discharge of fireworks without a permit." This charge is being added to enforce §27-4047(a), which provides that "It shall be unlawful to use or discharge any fireworks within the city without a permit." Pursuant to §27-4047.1, which was enacted by Local Law 69/2005, §27-4047(a) has a set statutory penalty of $750, rather than a range of penalties. However, the Board is including this penalty in the Public Safety Graffiti Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive.

(3) The Board has revised two entries and has added two entries to the Department of Sanitation's Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. This was done (i) in order to distinguish the enforcement of §16-118(2)(a) when that Section is used in connection with Notices of Violation that are issued for Dirty Sidewalk, as opposed to the enforcement of §16-118(2)(a) when that Section is used in connection with Notices of Violation that are issued for Dirty Area; (ii) in order to distinguish the enforcement of §16-118(2)(b) when that Section is used in connection with Notices of Violation that are issued for Dirty Sidewalk (Vacant Lot), as opposed to the enforcement of §16-118(2)(b) when that Section is used in connection with Notices of Violation that are issued for Dirty Area (Vacant Lot). This will allow more accurate tracking of enforcement of §§16-118(2)(a) and 16-118(2)(b).

(4) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add three new entries in that Penalty Schedule for violation of Administrative Code §§16-308(g) and 16-308(h). These entries were added in light of the enactment of Local Law 40/2006, which pertains to the composting of yard waste. This law amended the New York City recycling law, found in Title 16, Chapter 3 of the New York City Administrative Code, by requiring residents to place yard waste out for Department of Sanitation (DSNY) collection in paper bags or loose in rigid containers. The law also prohibits both licensed and unlicensed landscapers and gardeners from placing yard waste at the curb for DSNY collection and from

dispersing such yard waste in or about the curb or street. As of October 2008, landscapers and gardeners must dispose of such yard waste at a permitted composting facility, provided that there is sufficient composting capacity in the City or at a facility within ten miles from the borough in which the yard waste was generated. If composting facilities with sufficient capacity do not exist, the yard waste may be disposed of at any appropriately permitted solid waste management facility. The provisions pertaining to residents found in §16-308(g) become effective on April 1, 2007, while the provisions pertaining to landscapers found in §16-308(h) became effective as of October 1, 2008. The law itself, in §16-324(a) of the New York City Administrative Code, imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board is including these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that for Sections 16-308(g) and 16-308(h), the prior violations must have been within a twelve month period, to count as a prior violation.

(5) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add three new entries in that Penalty Schedule for violation of Administrative Code §§16-404, 16-405(a) and 16-405(b). These entries have been added in light of the enactment of Local Law 97/2005, which pertains to a recycling program for all rechargeable batteries. The law added a new chapter four to Title 16 of the New York City Administrative Code. The law requires New York City businesses that sell rechargeable batteries (except food stores under 14,000 square feet) to accept from consumers used rechargeable batteries for proper disposal. The law also requires manufacturers to submit a plan to the Department of Sanitation (DSNY) identifying the methods by which the manufacturers will collect, transport and recycle rechargeable batteries collected by retailers. The law also prohibits any person from knowingly disposing of rechargeable batteries as solid waste in New York City. The law itself, in §16-406 of the New York City Administrative Code, imposes flat penalties for each level of offense, rather than a range of dollar amounts. However, the Board has included these penalties in the Sanitation Penalty Schedule solely for the convenience of the public, to ensure, to the extent possible, that ECB's Penalty Schedules are comprehensive. The Board has also revised the note that is prefaced with three asterisks in the Sanitation Penalty Schedule to reflect the fact that for §§16-404 and 16-405(a) and 16-405(b) the prior violations must have been within a twelve month period, to count as a prior violation.

(6) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the entry in the "Section/Rule" column of that Penalty Schedule that currently reads "34 RCNY 2-11(g)(2)(iii)," for "Failure to apply for permit within two business days of emergency work," to instead read "34 RCNY 2-11(g)(2)(viii)." The reason for this change is to reflect the proper citation for the charge of "Failure to apply for permit within two business days of emergency work."

2. Statement of Basis and Purpose in City Record May 9, 2008: The Environmental Control Board (ECB) had a Public Hearing on April 14, 2008, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. 1) The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add ten new charges pertaining to new legal requirements regarding recycling programs for plastic bags and film plastic. Those new requirements regarding recycling programs for plastic bags and film plastic were established by Local Law No. 1 of 2008, which was signed into law on January 23, 2008. That Local Law creates a new Chapter 4-B within Title 16 of the NYC Administrative Code that requires that certain retailers in the City establish an in-store recycling collection program for plastic bags and film plastic such as dry cleaning bags and shrink wrap. The law also requires retailers to maintain records evidencing the weight of the plastic bags that they collect for recycling and to report this information annually to the Department of Sanitation. In addition, the law requires plastic bag manufacturers to provide for collection and recycling of used plastic bags from retailers; to annually report the weight of such bags to the retailer; and to provide retailers, upon request, with educational materials that encourage the reduction, reuse and recycling of plastic carryout bags. These ten new charges that the Board has added to the Sanitation Penalty Schedule implement these provisions of the law. In connection with these ten new

charges, the Board has also revised one of the headnotes that is in the Sanitation Penalty Schedule to order to indicate what constitutes a repeat violation for the purpose of imposing repeat-violation penalties under the new law. Additionally, the Board has revised another one of the headnotes that is set out in the Sanitation Penalty Schedule in order to indicate the inapplicability of a thirty dollar late fee in connection with certain of these charges. 2) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to change the entry in the "Section/Rule" column of that Penalty Schedule for 34 RCNY 2-05(d)(16), which currently reads "failure to house cables/hoses 8 feet above ground," to instead read "fail to house overhead cables/hoses/wires with 14 feet minimum clearance." This revision was made to more accurately reflect the substantive provisions of 34 RCNY 2-05(d)(16), by specifying the requirement that all equipment hoses, cables or wires carried overhead across the sidewalk shall have fourteen feet minimum clearance. 3) The Board has revised the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add fifteen new charges pertaining to newsrack requirements set forth in §2-08 of Title 34 of the Rules of the City of New York. These new charges are in addition to the current charges in the Penalty Schedule that pertain to newsracks, which cite to provisions of Title 19 of the NYC Administrative Code rather than to provisions of the Rules of the City of New York. These new charges have been added to that Penalty Schedule to enable the Department of Transportation to have the enforcement option of citing to the provisions of the Rules of the City of New York, which in some cases are more specific and detailed in their provisions than are the corresponding sections of the NYC Administrative Code.

3. Statement of Basis and Purpose in City Record July 2, 2008: The Environmental Control Board (ECB) and the Department of Sanitation (DSNY) had a joint Public Hearing on June 4, 2008. There were four individuals present to offer verbal comments into the public record. Two were private citizens, one was a representative from Councilman Vincent Gentile's Office, and one was Councilman Simcha Felder. The Board has revised the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to add one charge, for a violation of NYS General Business Law §397-a, for placement of unsolicited advertisements on private property without the authorization of the property owner. This charge is being added in light of the fact that on January 28, 2008, Governor Spitzer signed into law Chapter 3 of the Laws of 2008, in relation to the distribution of unsolicited advertising on private property. This law amends §397-a of the General Business Law to prohibit persons or entities, in cities having a population of one million or more, from placing advertisements, circulars, etc. at private premises where the owner displays a conspicuous sign, at least 5 inches by 7 inches in size, stating "Do Not Place Unauthorized Materials On This Property." Mayor Bloomberg has designated the NYC Department of Sanitation to enforce this law. Accordingly, a new charge, corresponding to the provisions of the new law, has been added to the Sanitation Penalty Schedule to enforce against violations thereof.

4. Statement of Basis and Purpose in City Record Oct. 10, 2008: The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008, on proposed revisions of its Sanitation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has revised the charge codes associated with two charges in the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York. Those two charge codes pertain to the theft of recyclables and solid waste. Specifically, for the charge description that currently reads "Unauthorized Removal of Recyclable Materials from residential premises or vacant lots using a motor vehicle (Owner)," the charging section has been changed from §16-118(7)(b)(1) to §16-118(7)(f)(1)(i). Also, for the charge description that currently reads, "Unauthorized Removal of recyclable materials from commercial premises by using a motor vehicle. (Owner)," the charging section has been changed from §16-118(7)(c) to §16-118(7)(f)(1)(i). This is because §16-118(7)(f)(1)(i) better corresponds to these substantive charges. The penalties associated with these violations remain unchanged. The Board has also revised the note in the Sanitation Penalty Schedule found in §31-122 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York that is prefaced with three asterisks (***) to reflect the fact that for §16-118(7)(f)(1)(i), any person who violates §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) is considered a repeat violator where the same respondent has violated §16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that

was used in violation of subparagraph one of paragraph b or paragraph c of §16-118(7) where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation. This revision to the note in the Sanitation Penalty Schedule gives effect to the statutory language of §16-118(7)(f)(1)(i), which sets forth these repeat-violator provisions.

5. Statement of Basis and Purpose in City Record The Environmental Control Board (ECB) had a Public Hearing on August 25, 2008 on proposed revisions of its Sanitation Penalty Schedule found in §31-122 of Subchapter G of Title 31 of the Rules of the City of New York. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedule as set forth above. The Board has added seven new charges to the Department of Sanitation's Penalty Schedule pursuant to the enactment of Local Law 13 of 2008. Local Law 13 amends the Administrative Code of the City of New York in relation to the collection for recycling, reuse and safe handling of electronic equipment in the City of New York. The intention is to establish a system to provide for the collection, handling, recycling or reuse of electronic equipment in the City. Specifically, the Local Law creates a new Chapter 4-A within Title 16 of the Administrative Code of the City of New York that requires manufacturers of certain electronic equipment-such as computers, monitors and televisions-to collect their products offered for return by any person in the City, and to ensure that the equipment is properly disposed of in accordance with existing laws and EPA guidelines. Also, manufacturers are required to submit an electronic waste management plan to the New York City Department of Sanitation ("DSNY"), describing in detail how they would implement the requirements of the law. This law also makes it unlawful for manufacturers and others to dispose of electronic waste in the City's solid waste stream. As a result, the Board is adding these new charges to the Penalty Schedule. The effective dates of the various Sections of Law set forth in these new charges vary, and are set forth in Local Law 13. Specifically, for §16-423 ("failure of a manufacturer to submit initial electronic waste management plan to DSNY" & "failure of manufacturer to submit a valid electronic waste management plan to DSNY after it has been disapproved by DSNY more than two times") the effective date is September 1, 2008; for §16-422 (failure of manufacturer to accept covered electronic equipment or orphan waste pursuant to manufacturer's electronic waste management plan), and for 16-426(b) (improper disposal by manufacturer of electronic equipment as solid waste), and for 16-428(a) ("failure of manufacturer to submit annual report by July 1st of each calendar year" & "submission of annual report by manufacturer that contains false or misleading information") the effective date is July 1, 2009; and for §16-426(a) ("improper disposal by person of electronic equipment as solid waste") the effective date is July 1, 2010. Three of the charges (both §16-423 charges, and also one of the §428(a) charges, regarding the failure of a manufacturer to submit an annual report by July 1, of each calendar year) have per-day penalties of $1000 per day. These per day penalties are mandated by §16-427(d), established by Local Law 13 of 2008. This per-day penalty will run from the date of occurrence for a maximum of 60 days, the anticipated first scheduled ECB hearing date. Specifically, such per day penalty will continue to accrue until the Respondent either can prove a date specific that the violation has been corrected or for sixty days, whichever comes first.

6. Statement of Basis and Purpose in City Record Oct. 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on revisions to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York in light of the enactment of Local Law No. 13 of 2009 that amended Chapter 3 of Title 16 of the Administrative Code of the City of New York by adding a new subchapter 8 entitled SOLID WASTE AND RECYCLABLE MATERIALS AT STREET EVENTS. Neither written comments nor oral testimony were presented. Local Law No. 13 amends the Administrative Code of the City of New York in relation to street cleaning and the collection and removal of solid waste and recyclable materials at street events. The Board has added five new charges set forth above to the Sanitation Penalty Schedule in accordance with this local law. Local Law No. 13, effective February 13, 2009, implements a change to the New York City Administrative Code by ensuring that all designated recyclable materials generated at multi-day, multi-block street events are properly source separated for recycling, and that whatever cannot be recycled is discarded properly. Local Law 13 holds event organizers responsible for providing separate receptacles for solid waste and recyclables at each intersection of the street event, and monitoring those receptacles to ensure that they do not overflow and cause littered street conditions. Event organizers must also arrange for proper collection of these materials at the end of the night. The purpose of this law is to increase recycling

awareness and participation among all New Yorkers and tourists alike who attend the City's many street events. The definition of &#34§reet event" excludes the typical residential block party if it occupies no more than one block, for no more than one day and where no licensed vendor participates. It should be noted that a violation of ;st16-327(a), "Failure to Dispose of Solid Waste and Recyclable Materials Properly," occurs when a sponsor or production manager fails to arrange for removal of solid waste and recyclable materials at street events by private carter or by the New York City Department of Sanitation. The Penalty provisions in Local Law No. 13 for street cleaning and the collection and removal of solid waste and recyclable materials at street events are set forth in §16-328 of the Administrative Code of the City of New York. Local Law No. 13 contains only a flat penalty and not a range. For each of these five new charges, 16-327(a), 16-327(b)(1), 16-327(b)(2), 16-327(b)(3) and 16-327(b)(4), the penalties are $100 per violation, up to $500 per day or $2,000 per street event. Solely for the convenience of the public, ECB is including the five new charges in its penalty schedule as set forth in subchapter G of Title 3 of Chapter 48 of the Rules of the City of New York to ensure that ECB's Penalty Schedules are as comprehensive as possible.

7. Statement of Basis and Purpose in City Record Dec. 23, 2009: The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on various amendments to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. The Board has revised the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to include violations pertaining to the regulation of intermodal solid waste container facilities ("intermodal facilities"). An intermodal solid waste container facility is a facility or premises that is served by rail or vessel at which intermodal containers of solid waste are transferred from one transport vehicle to another for shipment by rail or vessel to an authorized disposal or treatment facility, where the contents of each container remain in the same closed container during the transfer between transport vehicles, and storage remains incidental to transport at the location where the containers are consolidated. Section 16-130 of the Administrative Code of the City of New York prohibits the operation of any solid waste facility without proper authorization from the New York City Department of Sanitation (DSNY). DSNY published final rules relating to the registration and operational requirements for intermodal facilities in 2004. These rules can be found in Subchapter D of Chapter 4 of Title 16 of the Rules of the City of New York. The registration requirements for an intermodal facility, as set forth in the rules, are authorized pursuant to §16-130(b) of the New York City Administrative Code. That section allows DSNY to establish by rulemaking one or more classes of permits. A registration for an intermodal facility is considered a class of permit under §16-130(b). The other rules found in Subchapter D set forth operation and maintenance requirements for an intermodal facility, including, but not limited to, the following: (1) the intermodal facility must be maintained in a safe and sanitary manner; (2) all solid waste received at the facility must be in intermodal containers at all times, including during receipt, storage and removal and (3) the intermodal facility must keep detailed records regarding the type and volume of solid waste received at the facility, the name of the solid waste management facility where the solid waste was loaded into the intermodal containers, and the destination of the solid waste. Penalties for violating these rules are set forth in §16-133(a) (2) of the Administrative Code, which allows for the imposition of a civil penalty of "not less than $2500 nor more than $10,000 for the first violation, not less than $5000 nor more than $10,000 for the second violation committed within a period of three years, and $10,000 for the third and any subsequent violation committed within such period." The default penalty for each offense is $10,000. The Board has added a head note to the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The head note is prefaced with eight asterisks (********) and reflects the definition of repeat violator contained in §16-133 (a) (2) of the New York City Administrative Code.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further

provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of

the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-123

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-123 Sewer Control Rules Penalty Schedule.

SEWER CONTROL RULES PENALTY SCHEDULE

The name "Division of Pollution Control and Monitoring" is abbreviated as "DPCM."

The term "Not Applicable" is abbreviated as "N/A."

The term "Notice of Violation" is abbreviated as "NOV."

Citations preceded by "A.C." are to the NYC Administrative Code.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

For purposes of this Penalty Schedule, the term "serious" in the charge for A.C. Title 24, Ch. 5/15 RCNY Ch. 19, for "any serious Admin. Code Rule violation" is defined as "any violation resulting in injury to human, animal, or aquatic life, harm to public health or the environment, or damage to the publicly owned treatment works or its collection system."

A second, third and/or subsequent violation shall be based on the following criteria: (1) an offense by the same respondent; (2) the prior NOV(s) is for the same subsection and paragraph of the same regulation as the current NOV; (3) the offense does not have to involve the same premises, equipment and/or vehicle; (4) the prior NOV(s) was concluded by a finding of violation or an admission or a default and has a date of offense within 1 year of the date of offense of the current NOV; and (5) if NOV(s) with different dates of offense are adjudicated at the same hearing, each NOV shall serve as a prior violation for all subsequently issued NOV's.

The default penalty for all charges in this Penalty Schedule is $10,000.

Mitigation, if applicable, shall be determined as per notes 1 through 9 below, and as indicated in the mitigation penalty column ("MIT. PENALTY") of this Penalty Schedule, and also as per "Compliance Incentives Policy Mitigation" set out below.

1 19-03(a)(9)19-04(a)-(c) Mitigation DPCM has received the results of sampling conducted by the respondent subsequent to the date of offense which are in compliance with applicable limits and deemed acceptable by DPCM. Such results must be received by DPCM within 30 calendar days from the date of service of the NOV. The burden of proving compliance shall be upon the respondent.

2 24-524(f) Mitigationfailureto comply DPCM has received proof deemed acceptable by DPCM that the Commissioner of Environmental Protection's order or permit has been fully complied with, within 30 calendar days from the due date for compliance with said order, or report due date.

3 19-03(a)(4)-(8)19-03(a)(10)-(11)19-03(a)(15) Mitigation DPCM has received proof deemed acceptable by DPCM that the spill/discharge was accidental, that the respondent has properly reported the spill/discharge to DPCM, has taken adequate measures to minimize the extent of the spill/discharge, and has properly cleaned the spill/discharge.

4 24-524(f) Mitigationfailure tocomply DPCM has received proof deemed acceptable by DPCM that the Commissioner of Environmental Protection's order or permit has been fully complied with, within 30 calendar days from the due date for compliance with said order, or report due date. Alternatively, a prior NOV exists for the same commissioner of environmental protection's order or permit reporting requirement (i.e. same report was due) and has a date of offense within 1 year of the date of offense of the current NOV and DPCM has received proof deemed acceptable by DPCM that the commissioner of environmental protection's order or permit has been fully complied with within 30 calendar days from the date of service of the current NOV.

5 19-02(a), (d)19-05(e)19-06(b) Mitigation DPCM has received proof deemed acceptable by DPCM that the violation has been corrected within 30 calendar days from the date of service of the NOV.

6 19-03(a)(12) Mitigationdischargeburdensometo plant DPCM has received proof deemed acceptable by DPCM that the respondent has immediately ceased the unauthorized discharge, performed a proper cleanup, if applicable, and taken adequate measures to prevent future unauthorized discharges.

7 24-509(c) Mitigationfailure toconnectto publicsewer Respondent has DEP house connection permit by first scheduled hearing date and connects within three weeks of the first scheduled hearing date.

8 24-509(c) Mitigationfailure toconnectto publicsewer Respondent files plumbing repair application with department of buildings by first scheduled hearing date and completes connection within five weeks of the first scheduled hearing date.

9 24-509(c) Mitigationfailure toconnectto publicsewer Respondent fails to initiate the connection process by first scheduled hearing date but completes connection within seven weeks of the first scheduled hearing date.

COMPLIANCE INCENTIVES POLICY MITIGATION

IF RECOMMENDED BY DPCM, PENALTIES MAY BE ASSESSED UNDER THE TERMS OF THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S POLICY ON INCENTIVES FOR BUSINESSES TO COMPLY WITH REGULATIONS GOVERNING DISCHARGES TO PUBLIC SEWERS, ALSO KNOWN AS THE COMPLIANCE INCENTIVES POLICY (CIP). A COPY OF THE CIP CAN BE OBTAINED FROM THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WASTEWATER TREATMENT, DIVISION OF POLLUTION CONTROL AND MONITORING. THE ACTUAL TEXT OF THE CIP SHALL BE DETERMINATIVE OF THE REQUIREMENTS FOR MITIGATION UNDER THE CIP.

SEE BELOW FOR A BRIEF SUMMARY OF THE CIP. SEE ALSO THE CIP PENALTY REDUCTION TABLE, BELOW.

Summary of CIP

(See actual CIP for further details)

Qualifying violations will be: 1) violations discovered through a voluntary on-site compliance assistance program, as per the terms of the CIP; 2) violations discovered through an environmental self-audit, as per the terms of the CIP; 3) violations discovered through special testing, sampling, or monitoring performed by a business for the purpose of evaluating or upgrading its equipment or processes, as per the terms of the CIP.

The disclosure of the violation must occur within the time frames required by the CIP, and before the violation was otherwise discovered by, or reported to DPCM, and cannot be a result of legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.

As described in the CIP, businesses must correct the violations within the shortest practicable period of time, not to exceed 90 days following detection of the violation, unless an additional 90 day period is approved by DPCM, only if necessary to allow the business to correct the violation by implementing pollution prevention measures.

Additional requirements include, but are not limited to (see actual CIP for all requirements, and for further details);

a) the business immediately corrects threats to the public's health, safety or the environment; and

b) the business has not intentionally, knowingly, recklessly, or with criminal or gross negligence caused harm to public health, safety or the environment; and

c) the violation does not involve criminal conduct; and

d) the violation does not cause the publicly-owned treatment works facility, which treats the related NYC sewer discharge where the violation occurred, to exceed its effluent limitations; and

e) the business has not received any NOVs, for the same subsection and paragraph of the same regulation as the current NOV, with a date of offense within two years prior to the date of offense of the current NOV, or alternatively, at DPCM's discretion, the business either funds an environmentally beneficial project that contributes to the betterment of the NYC wastewater collection and treatment system (or other related or non-related Department of Environmental Protection concerns), or attends a mandatory user-paid environmental education program.

CIP Penalty Reduction Table

If Respondent also qualifies for a non-CIP mitigated penalty, the CIP percentage penalty reduction shall be applied to the mitigated penalty amount.

Determining Factors For Reduction in Penalty Percent Reduction In Penalty

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and no harm to public health, safety or the environment. 100%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval). Instead of 90 days following detection of the violation, and no prior NOV for the same subsection and pragraph as current NOV within 2 years, and no harm to public health, safety or the environment. 90%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and no harm to public health, safety or the environment. 80%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval), instead of 90 days following detection of the violation, and NOV for the same subsection and paragraph within 2 years but environmentally beneficial project funded or environmental education program attended, and no harm to public health, safety or the environment. 70%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 60%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval) instead of 90 days following detection of the violation, and no prior NOV for the same subsection and paragraph as current NOV within 2 years, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 50%

All CIP requirements satisfied, and violation corrected within 90 days following detection of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and harm to public health, safety, or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 40%

All CIP requirements satisfied, and violation corrected within 180 days (with DPCM approval) of the violation, and NOV exists for same subsection and paragraph within 2 years, but environmentally beneficial project funded or environmental education program attended, and harm to public health, safety or the environment, but not intentionally, knowingly, recklessly, or with criminal or gross negligence. 30%

Regulation Description First Violation Second Violation Third Viol. Subs Viol.

15 RCNY 19-02(a), (d) Unauthorized connection to public sewer/Interceptor 300 200[5] 500 NO 1000 2500

15 RCNY 19-02(b), (c), (e) Unauthorized discharge to catch basin/storm/sanitary sewer 250 NO 500 NO 1000 2500

15 RCNY 19-02(f) Discharge of Groundwater without permit 250 NO 500 NO 1000 2500

15 RCNY19-03(a)(1) Discharge of obstructive substance or Other Interference 350 NO 500 NO 1000 2500

15 RCNY19-03(a)(2) Discharge of snow and ice at Unauthorized Location 100 NO 200 NO 500 1000

15 RCNY19-03(a)(3) Discharge of steam/waste water over 150°F 350 NO 500 NO 1000 2000

15 RCNY19-03(a)(4) Discharge of flammable or explosive Substance 1000 250[3] 2000 NO 4000 10,000

15 RCNY19-03(a)(5) Discharge of oil0-5 qts from changing oil in privately owned Automobile 500 NO 800 NO 1000 2000

15 RCNY19-03(a)(5)-(8) Discharge of oil sludge/non-polar material/coal tar/paints 1000 500[3] 2000 800[3] 4000MIT.Penalty1000[3] 7500

15 RCNY 19-03(a)(9) Discharge of wastewater outside of applicable ph limits 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-03(a) (10)-(11) Discharge of toxics 1000 250[3] 2000 NO 4000 10000

15 RCNY 19-03 (a)(12) Discharge of pollutant burdensome to sewage treatment plant 2500 1500[6] 5000 NO 7500 10000

15 RCNY 19-03 (a)(13)-(14) Discharge of noxious malodorous or discoloring substance 350 NO 800 NO 1000 2000

15 RCNY 19-03 (a)(15) Discharge of dry cleaning wastes 1000 250[3] 2000 NO 4000 5000

15 RCNY 19-03(b) Discharge of unshredded garbage 350 NO 1000 NO 2000 5000

15 RCNY 19-03 (d)(1) Failure to Protect against accidental discharge 350 NO 1000 NO 2500 5000

15 RCNY 19-03 (d)(2) Failure to immediately notify DEP of accidental discharge 500 NO 1000 NO 2500 5000

15 RCNY 19-03 (d)(3) Failure to post accidental discharge procedures 250 NO 500 NO 1000 2500

15 RCNY 19-03 (d)(4) Failure to mitigate discharge and commence clean-up 500 NO 1000 NO 2500 5000

15 RCNY 19-03(e) Failure to control sewer odor arising in premise 350 NO 500 NO 1000 2500

15 RCNY 19-03(f) Failure to install or maintain pretreatment equipment (grease) 100 NO 400 NO 800 1500

15 RCNY 19-03(g) Unlawful discharge of radioactive material 2500 NO 5000 NO 7500 10000

15 RCNY 19-04(a) Discharge of cyanide amenable in excess of local limit, w/exceedance less than 25x the limit 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-04(a) Discharge of cyanide amendable in excess of local limit, w/exceedance 25x the limit or greater 750 NO 1000 NO 2000 5000

15 RCNY 19-04 (a)-(c) Discharge in excess of local/categorical limits/limits set by commissioner w/exceedance less than 10x the limit (not applicable to cn amenable under 19-04(a)) 400 250[1] 800 400[1] 1000 2000

15 RCNY 19-04 (a)-(c) Discharge in excess of local/categorical limits/limits set by commissioner w/exceedance 10x the limit or greater (not applicable to cn amenable under 19-04(a)) 750 NO 1000 NO 2000 5000

15 RCNY 19-04(d) Failure to Maintain/properly operate pretreatment equipment (categorical) 350 NO 500 NO 1000 2500

15 RCNY 19-04(e) Unlawful dilution of wastewater 500 NO 1000 NO 2500 5000

15 RCNY 19-05(a)(1)-(2) Discharge of wastewater w/o permit or equivalent control mechanism 300 NO 500 NO 1000 2500

15 RCNY 19-05(c) Refusal to provide information or permit inspection (pretreatment) 500 NO 1000 NO 2500 5000

15 RCNY 19-05(d) Failure to install measurement/sampling equipment as required 350 NO 500 NO 1000 2500

15 RCNY 19-05(e) New connection to public sewer, without permit 500 250^{5} 1000 NO 2500 5000

15 RCNY 19-06 (a)(1) Discharge of scavenger waste without scavenger waste permit 1000 NO 2500 NO 5000 7500

15 RCNY 19-06(a)(1)-(2) Discharge of scavenger waste in violation of terms of permit/discharge of scavenger waste from outside NYC 500 NO 1000 NO 2500 5000

15 RCNY 19-06 (a)(3) Discharge of non-sanitary Wastes 1000 NO 2500 NO 5000 7500

15 RCNY 19-06 (a)(4) Discharge of scavenger wastes at non-designated Manhole 500 NO 1000 NO 2500 5000

15 RCNY 19-06(b) Discharge of Scavenger wastes in unclean manner/failure to produce permit 400 100^{5} 1000 2505 2500 5000

15 RCNY 19-06(d) Unlawful transport of other wastes in scavenger Truck 1000 NO 2500 NO 5000 7500

15 RCNY 19-06(e) Impermissible discharge of waste from Grease interceptor, separator, or Trap 1000 NO 2500 NO 5000 7500

15 RCNY 19-07(a), (i) Failure to prepare/Implement silver halide bmpp 350 NO 500 NO 1000 2500

15 RCNY 19-07(b), (f) Failure to install, operate, and maintain proper Pretreatment Equipment 350 NO 500 NO 1000 2500

15 RCNY 19-07(c) Failure to follow off-site recovery req. for silver Halide records and measurements, or vendor Certification 350 NO 500 NO 1000 2500

15 RCNY 19-07(d), (h) Failure to maintain and make available all required records and measurements, or vendor Certification 350 NO 500 NO 1000 2500

15 RCNY 19-10(b)(1)-(2) Unauthorized entry into or damage to sewer system 2500 NO 5000 NO 7500 10000

15 RCNY 19-10(c) Interference with DEP personnel/Equipment 1000 NO 2500 NO 5000 10000

15 RCNY 19-10(d) Refusal to allow entry/tampering with sampling or testing device 1000 NO 2500 NO 5000 10000

15 RCNY 19-10(e) Failure to Provide Required Information/refusal to Cooperate 500 NO 1500 NO 5000 7500

15 RCNY 19-12(a), (c) Failure to install/maintain pretreatment equipment (dry cleaners) 350 NO 500 NO 1000 2500

15 RCNY 19-12(b) Discharge of dry cleaning waste (perc) 500 NO 1000 NO 2500 5000

15 RCNY 19-12(d) Failure to protect against accidental spill (dry cleaner waste) 350 NO 500 NO 1000 2500

15 RCNY 19-12(e) Failure to maintain records (dry cleaners) 350 NO 500 NO 1000 2500

24-509(c) Failure to connect to public sewer w/i 6 months of notification 3000 500[7] 750[8] 1000[9] N/A N/A N/A N/A

24-523(c)(2) Failure to maintain/submit required record/Report 350 NO 500 NO 1000 2500

24-523(c)(2) Failure to maintain monitoring equipment/methods 350 NO 500 NO 1000 2500

24-523(c)(2) Failure to Provide Required information 500 NO 1500 NO 5000 7500

24-523(c)(3) Refusal to allow inspection of monitoring equipment/method or sampling 1000 NO 2500 NO 5000 10000

24-523(c)(4) Providing false or misleading information 1000 NO 2500 NO 5000 10000

24-523(f)/24-524(f) Failure to comply with Comm. request for information/terms of permit other than reporting requirements 500 NO 1000 NO 2500 5000

24-524(f) Failure to comply with Comm.s Order 400 125[2] 600 250[4] 800MIT.Penalty400[4] 1000

24-524(f) Failure to comply with terms of permit reporting requirements 250 125[2] 500 250[4] 800 1000

A.C. Title 24,Ch. 5/15 RCNY Ch. 19 Miscellaneous Administrative Code/rule violation 500 NO 1000 NO 2500 5000

A.C. Title 24,Ch. 5/15 RCNY Ch. 19 Any serious Administrative Code/rule violation 2500 NO 5000 NO 7500 10000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-123) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record June 20, 2005 §14, eff. July 20, 2005. [See T48 §3-101

Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fifth unnumbered par amended City Record May 14, 2009 §1, eff. June 13, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 2009:

As a result of a previous amendment to ECB rules, all ECB rules have now been transferred into Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) from Chapter 31 of Title 15 of the RCNY. This transfer of ECB rules into Chapter 3 of Title 48 was due to the fact that, pursuant to the mandate of Local Law 35 of 2008, ECB was consolidated with the Office of Administrative Trials and Hearings as of November 23, 2008. As a result of the transfer of ECB rules into Chapter 3 of Title 48, ECB also previously re-numbered the section numbers of all ECB rules so that every section number previously prefaced with a "31-" (for "Chapter 31" of 15 RCNY) is now prefaced with a "3-" (for Chapter 3 of 48 RCNY). No written comments were received on this proposed rule.

Various sections of ECB's rules include cross-references to other sections of ECB's rules. Accordingly, the Board also previously amended the various cross-references within ECB's rules so that the cross-references now correctly refer

to the other sections of ECB's rules as being prefaced with a "3-" rather than with a "31-".

However, due to a ministerial oversight, ECB did not amend a few of these section number references. Accordingly, ECB has corrected that ministerial oversight. Specifically, in preliminary paragraphs at the beginning of §§3-123 through 3-126 of Title 48, ECB has amended the cross-references in those paragraphs. The citation in those paragraphs that previously read "section 31-81(b)" now reads "3-81(b)", and the citation in those paragraphs that previously read "section 31-32" now reads "3-32."

No public hearing regarding the proposed rule was held, pursuant to New York City Charter §1043(d)(ii), because such a public hearing would serve no public purpose. This is in view of the fact that this rule merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed

regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-124

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-124 Department of Transportation Penalty Schedule.

DEPARTMENT OF TRANSPORTATION PENALTY SCHEDULE

A repeat violation is a violation by the same respondent of the same provision of law, with a date of occurrence within 6 months of the date of occurrence of the previous violation.

All citations are to the NYC Administrative Code or to Title 34 of the Rules of the City of New York.

With the exception of Sections 19-136, 34 RCNY 2-02(a)(1)(ii), 34 RCNY 2-09(f)(4)(v), 34 RCNY 2-11(e)(10)(v), pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section/Rule Description Penalty Default

Admin. Code 19-102(i) Use/opening of street w/o permit 800 2,400

Admin. Code 19-102(i) Use/opening of protected street w/o permit 1,400 4,200

Admin. Code 19-107 Street closing without permit 1,200 3,600

Admin. Code 19-108 Failure to have permit on site or in field office 50 150

Admin. Code 19-109(a) Failure to provide adequate protection at worksite 400 1,200

Admin. Code 19-109(b) Identifying signs improperly displayed or missing 100 300

Admin. Code 19-117(a) Constructing vault w/o license or revocable consent 500 1,500

Admin. Code 19-119 Vault opening without proper protection 250 750

Admin. Code 19-121(a) Construction materials/equipment stored on street w/o permit 750 2,250

Section/Rule Description Penalty Default

Admin. Code 19-121(b)(2) Debris/constr. Materials obstructing gutters/sidewalk, etc. 250 750

Admin. Code 19-121(b)(3) Construction material/equipment w/o proper reflective markings 250 750

Admin. Code 19-121(b)(4) Material/equipment without name & address of owner 100 300

Admin. Code 19-121(b)(5) Construction material/equipment w/in 5 ft. of surface RR track 500 1,500

Admin. Code 19-121(b)(6) No street protection under construction material/equipment 250 750

Admin. Code 19-121(b)(7) Obstruction of fire hydrant or bus stop 500 1,500

Admin. Code 19-122 Sand/dirt/rubbish/debris not removed from site within 7 days 250 750

Admin. Code 19-123 No street protection under commercial refuse container 250 750

Admin. Code 19-124(a) Canopy without permit 100 300

Admin. Code 19-125 Post/pole/flagpole socket/lamppost w/o permit/consent 100 300

Admin. Code 19-126 Use/movement/removal of crane/building/structure w/o permit 1,000 3,000

Admin. Code 19-128(a) Installation/maintenance of public phone booth w/o license 150 450

Admin. Code 19-102(ii) Failure to comply with terms and conditions of DOT permit 1,200 3,600

Admin. Code 19-138(b) Defacement of roadway or sidewalk 50 150

Admin. Code 19-176(b) Unlawful bicycle riding 50 100

Admin. Code 19-102(i) Working w/o permit on controlled access highway 4,000 5,000

Admin. Code 19-102(ii) Fail to comply with terms of permit (controlled access highway) 4,000 5,000

Admin. Code 19-150 Fail to comply with Comm. Order re: illegal encroachment/projection 250 400

Admin. Code 19-136 Goods/wares/merchandise obstructing sidewalk 150 500

Admin. Code 19-150 Fail to comply with Comm. Order re: illegal encroachment/projection 250 400

34 RCNY 2-02(a)(1)(ii) Failed to provide name and tel no. of emergency contact 250 500

34 RCNY 2-07(a)(5) Toolcart stored on sidewalk failed to provide a 5 foot minimum walkway 250 750

34 RCNY 2-07(a)(5) Toolcart stored on roadway without a permit 250 750

34 RCNY 2-07(a)(5) Toolcart stored on sidewalk obstructing hydrant, bus stop, or driveway 500 1,500

34 RCNY 2-02(m) Illegally working on a street during an embargo period 1,200 3,600

34 RCNY 2-07(b)(2) Failure to repair defective street condition found within an area extending 12 inches outward from the perimeter of the cover/grating 250 750

34 RCNY 2-09(f)(4)(v) Failed to install expansion joints as per subsection 250 750

34 RCNY 2-09(f)(4)(v) Failed to seal expansion joints as per subsection 250 750

34 RCNY 2-09 (f)(4)(viii) Failure to fully replace defective sidewalk flag 250 500

34 RCNY 2-09 (f)(4)(xiv) Failure to install pedestrian ramp as per DOT drawings 400 1000

34 RCNY 2-09 (f)(4)(xvi)(A) Failure to repair distinctive sidewalk in kind 250 500

34 RCNY 2-11(e)(10)(v) No Raised Plow sign/Steel plates or fail to countersink plates flush with rd'wy 250 750

34 RCNY 2-07(c)(4)(i) Opening of manhole w/o an authorization number 1,000 3,000

34 RCNY 2-11(f)(4)(i) No notice to DOT before start phase of work on protected street 250 750

34 RCNY 2-11(c)(1) Failure to notify Public Service Corp. prior to excavation 250 750

34 RCNY 2-11(e)(1) Failure to notify City 24 hrs before street work 250 750

34 RCNY 2-11(e)(9)(i) Temporary pavement not flush with surrounding area 500 1,500

34 RCNY 2-11(e)(12)(ii) Wearing course not flush with surrounding area 750 2,250

34 RCNY 2-11(e)(8)(vi) Temporary restoration sunken more than 2 inches 500 1,000

34 RCNY 2-07(c)(1) Doing non-emergency work on a critical roadway during restricted hours 1,000 3,000

34 RCNY 2-07(b)(3) Utililty cover/street hardware not flush with surrounding area 1,000 3,000

34 RCNY 2-05(d)(12) Mixing mortar on roadway w/o protection 250 750

34 RCNY 2-05(d)(10) Failure to provide space for loading & unloading of materials 250 750

34 RCNY 2-05(i)(1) Crossing s/w with a motorized vehicle w/o permit 250 750

34 RCNY 2-05(d)(16) Fail to house overhead cables/hoses/wires with 14 feet minimum clearance 250 750

34 RCNY 2-05(h)(1) Construction shanty/trailer/w/o a permit 150 450

34 RCNY 2-05(h)(4) Failure to remove shanties/trailers from roadway/sidewalk 250 750

34 RCNY 2-05(f)(1)(i) Failure to install curb separate from sidewalk 250 750

34 RCNY 2-11(e)(5) Failure to maintain a 5ft pedestrian walkway on sidewalk 250 750

34 RCNY 2-11(e)(12)(vii) Failure to restore pavement/curb/gutter/s/w in kind 250 750

34 RCNY 2-11(e)(16)(i)(a) Failure to submit a sketch at the completion of the job 50 150

34 RCNY 2-11(e)(3)(ii) Tunneling/jacking without a permit 400 1,200

34 RCNY 2-11(e)(3)(i) Excavation down 5 feet or greater w/o shoring 1,500 4,500

34 RCNY 2-14(b)(1) Banners w/o permit 150 450

34 RCNY 2-11(e)(8)(i) Unsuitable backfill material used 250 750

34 RCNY 2-11(e)(10) Failure to pin and/or ramp steel plates 1,200 3,600

34 RCNY 2-11(e)(12)(x) Failure to permanently restore cut within required time 800 2,400

34 RCNY 2-11(e)(10)(vi) Failure to use skid resistant plating and/or decking on roadway 1,000 5,000

34 RCNY 2-11(e)(12)(viii) Failure to seal street opening joints 100 300

34 RCNY 2-11(e)(12)(ix) Failure to restore lane markings 750 2,250

34 RCNY 2-11(e)(14)(i) Failure to apply color code identifying permittee 50 150

34 RCNY 2-02(c)(2) Failure to display required signs at work site 250 350

34 RCNY 2-11(e)(4)(v) Failure to post flagperson at worksite to give directions 800 2,400

34 RCNY 2-11(e)(16)(iii) Failure to comply with DOT Standard Specifications 400 1,200

34 RCNY 2-04(f)(1) Canopy erected/maintained on a restricted street 150 450

A.C. 19-136(b) Vehicle(s) on sidewalk 50 300

34 RCNY 2-11(g)(1)(i) Working without a valid emergency number 1,000 3,000

34 RCNY 2-11(g)(1)(ii) Doing non-emergency work with an emergency authorization number 1,000 3,000

34 RCNY 2-11(g)(2)(i) Failure to begin emergency work within 2 hrs after authorization 500 1,500

34 RCNY 2-11(g)(2)(ii) Failure to perform emergency work around the clock 1,000 3,000

34 RCNY 2-11(g)(2)(viii) Failure to apply for permit within two business days of emergency work 250 750

34 RCNY 2-07(a)(3) Restricting more than 11ft of roadway by opening covers/gratings 500 1,600

34 RCNY 2-07(a)(4) Opening more than two consecutive covers/gratings 500 1,600

34 RCNY 2-07(c)(4)(iv) Fail to perform emergency work around the clock(covers/gratings) 1,000 3,000

34 RCNY 2-07(c)(4)(v) Fail to notify DOT of completion of emergency work(covers/gratings) 250 750

34 RCNY 2-11(e)(4)(ii) Failure to plate excavation in driving lane or intersection 1,200 3,600

34 RCNY 2-11(e)(2) Use of Ram Hoe/truck mounted pavement breaker to precut pavement 250 400

34 RCNY 2-11 (e)(11)(iv) Failure to use correct ratio of asphalt binder 400 1200

34 RCNY 2-11 (e)(11)(v) Failure to restore concrete base at same grade as existing base 400 1200

34 RCNY 2-11 (e)(11)(vi) Installing asphalt other than binder as a base course 400 1200

34 RCNY 2-11 (e)(11)(vii) Installation of shallow conduit without department approval 250 500

34 RCNY 2-11 (e)(12)(iii) Failure to provide minimum thickness of wearing course on full depth asphalt restoration 400 1200

34 RCNY 2-11 (e)(12)(v) Failure to restore entire pavement between street opening and curb 400 1200

34 RCNY 2-11 (e)(12)(vi) Failure to restore street in kind (non-historic district) 750 2250

34 RCNY 2-11 (e)(12)(ix) Installing Construction Signs w/o a Permit 150 450

34 RCNY 2-11 (e)(13)(ii) Failure to restore concrete pavement at the same depth, strength and finish as original pavement 400 1200

34 RCNY 2-11 (e)(13)(v) Installing asphalt on a concrete street or concrete bus stop area 700 2100

34 RCNY 2-11 (e)(14)(iii) Failure to install a color coding marker at the end of the restoration 50 150

34 RCNY 2-13(l)(2) Failure to repair sidewalk covering a vault 250 400

34 RCNY 2-14(e)(2)(v) Failure to maintain and/or replace weatherproof receptacles as necessary for holiday/temp. lighting. 150 300

34 RCNY 2-14(e)(2)(viii) Failure to obtain and maintain the required insurance for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(ix) Failure to obtain a DOT permit prior to commencing work for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(x) Failure to remove temporary lighting and related equipment when required for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xiii) Use of electrical service exceeding 120 volts and/or fused larger than 15 amperes for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xiv) Failure to comply with minimum height clearances for holiday/temp. lighting. 250 500

34 RCNY 2-14(e)(2)(xv) Supporting or securing holiday/temp. lighting to a fire escape or drainpipe; failure to insulate temporary lighting. 250 500

34 RCNY 2-14(e)(2)(xviii) Failure to obtain DOT approval for adjustments to work on holiday/temp. lighting. 200 400

34 RCNY 2-14(e)(2)(xix) Failure to perform changes mandated by the Department on holiday/temp. lighting. 150 300

34 RCNY 2-14(e)(2)(xxi) Failure to certify work for holiday/temp. lighting. 150 300

34 RCNY 2-14 (f)(4)(i) Commercial refuse cont. stored/placed in "No Stopping," "No Standing," or "No Parking Anytime" area 250 750

34 RCNY 2-14 (f)(4)(ii) Commercial refuse container stored/placed within fifteen feet of a hydrant 250 750

34 RCNY 2-14 (f)(6) Improperly labeled commercial refuse container 250 750

34 RCNY 2-14 (f)(9) Commercial refuse container w/o proper reflective markings on all four sides 250 750

34 RCNY 2-14 (f)(11) Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks or driveway 250 750

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property-FIRST OFFENSE 150 300

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property-SECOND OFFENSE 300 600

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property and causes physical contact with a person-FIRST OFFENSE 250 500

Admin. Code 19-176(c) Riding bicycle on sidewalk in manner which endangers any person or property and causes physical contact with a person-SECOND OFFENSE 500 1,000

19-128.1(b)(1) Newsrack exceeds size limits 100 500

19-128.1(b)(2) Newsrack used for impermissible advertising/promotional purposes 100 500

19-128.1(b)(3) Failure to keep coin return mechanism in good working order 100 500

19-128.1(b)(4) Failed to affix correct name/address/tel. no. to newsrack as per subsection 100 500

19-128.1(b)(5),(6) Newsrack placed/installed/maintained in improper location 250 500

19-128.1(b)(7) Failed to place/install newsrack in a manner so that it cannot be tipped over 250 500

19-128.1(c)(1) Failed to notify DOT of newsrack info and compliance as per subsection 3,000 4,000

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 1-99 racks 375 500

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 100-249 racks 550 750

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 250-499 racks 1,100 1,500

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 500-749 racks 1,700 2,250

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 750-999 racks 2,300 3,000

19-128.1(c)(2) Failed to notify DOT of required newsrack information for 1,000 racks 3,000 4,000

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 1-99 racks. 375 500

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 100-249 racks. 550 750

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 250-499 racks. 1,100 1,500

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 500-749 racks. 1,700 2,250

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 750-999 racks. 2,300 3,000

19-128.1(d) Failed to maintain/provide req'd indem/ins., info for 1000 racks 3,000 4,000

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 1-99 racks 375 500

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 100-249 rks 550 750

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to/inaccurately certified graffiti-removal info for 1000 rks 3,000 4,000

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 1-99 racks 375 500

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 100-249 rks 550 750

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to maintain accurate logs/records as per subsec for 1000 rks 3,000 4,000

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 1-99 racks 375 500

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 100-249 rks 550 750

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 250-499 rks 1,100 1,500

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 500-749 rks 1,700 2,250

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 750-999 rks 2,300 3,000

19-128.1(e)(1) Failed to provide maint., logs/records as per subsec for 1000 rks 3,000 4,000

19-128.1(e)(2) Failed to remove refuse from newsrack as per subsection 100 500

19-128.1(e)(3) Newsrack empty/unsecured door for impermissible time 100 500

19-128.1(e)(4) Failed to correct newsrack damaged/in need of repair as per subsection 100 500

19-128.1(e)(5) Failed to repair damage to City property/sidewalk caused by newsrack 100 500

34 RCNY 2-08(e)(3) Failed to remove refuse from newsrack as per paragraph 100 500

34 RCNY 2-08(e)(5) Newsrack empty/unsecured door for impermissible time 100 500

34 RCNY 2-08(e)(4) Failed to correct newsrack damaged/in need of repair as per paragraph 100 500

34 RCNY 2-08(b)(3) Failed to repair damage to City property/sidewalk caused by newsrack 100 500

34 RCNY 2-08(d)(2) Failed to affix correct name/address/tel. no. to newsrack as per paragraph 100 500

34 RCNY 2-08(d)(1) Newsrack exceeds size limits 100 500

34 RCNY 2-08(d)(3) Newsrack used for impermissible advertising/promotional purposes 100 500

34 RCNY 2-08(c) Newsrack placed/installed/maintained in improper location 250 500

34 RCNY 2-08(b)(1) Failed to place/install newsrack in a manner so that it cannot be tipped over 250 500

34 RCNY 2-08(b)(4) Failed to notify DOT of newsrack info and compliance as per paragraph 3,000 4,000

34 RCNY 2-08(e)(1) Failed to certify/inaccurately certified graffiti removal as per DOT requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(e)(2) Failed to maintain accurate logs/records per DOT requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(e)(2) Failed to provide maintenance logs/records to DOT on request

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(b)(4) Failed to notify DOT of newsrack info in accordance with rule requirements

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

34 RCNY 2-08(f) Failed to maintain/provide proper indemnification/insurance info

1-99 racks 375 500

100-249 racks 550 750

250-499 racks 1,100 1,500

500-749 racks 1,700 2,250

750-999 racks 2,300 3,000

1,000 or more racks 3,000 4,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-124) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Third unnumbered par amended City Record May 14, 2009 §2, eff. June 13, 2009. [See T48 §3-123 Note 1]

Table 34 RCNY 2-05(d)(16) amended City Record May 9, 2008 §4, eff. June 8, 2008. [See T48 §3-122 Note 2]

Table 19-147(d) "Failure . . . castings" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-02(m) "Illegal . . . period" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . walkway" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . permit" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(a)(5) "Toolcart . . . driveway" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-07(b)(2) "Failure . . . cover/grating" added City Record Nov. 14, 2005 §2, eff. Dec. 14, 2005. [See T48 §3-114 Note 1]

Table 34 RCNY 2-09(f)(4)(viii) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-09(f)(4)(xiv) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-09(f)(4)(xvi)(A) added City Record Oct. 2, 2009 §1, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(iv) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(vi) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(11)(vii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(iii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(vi) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(ix) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(12)(x) amended (former 2-11(e)(12)(xi)) City Record Dec. 9, 2008 §1, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(12)(viii) amended (former 2-11(e)(12)(ix)) City Record Dec. 9, 2008 §2, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(12)(ix) amended (former 2-11(e)(12)(x)) City Record Dec. 9, 2008 §3, eff. Jan. 8, 2009. [See Note 2]

Table 34 RCNY 2-11(e)(13)(ii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(13)(v) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(e)(14)(iii) added City Record Oct. 2, 2009 §2, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-11(g)(2)(viii) Failure to apply . . . emergency work amended City Record Aug. 16, 2007 §7, eff. Sept. 15, 2007. [See T48 §3-122 Note 1]

Table 34 RCNY 2-14(e)(2)(v) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(viii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(ix) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See

Note 1]

Table 34 RCNY 2-14(e)(2)(x) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xiii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xiv) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xv) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xviii) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xix) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(e)(2)(xxi) added City Record Oct. 31, 2007 §2, eff. Nov. 30, 2007. [See Note 1]

Table 34 RCNY 2-14(f)(4)(i) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(4)(ii) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(6) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(9) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-14(f)(11) added City Record Oct. 2, 2009 §3, eff. Nov. 1, 2009. [See Note 3]

Table 34 RCNY 2-08 entries (last 15 entries) added City Record May 9, 2008 §5, eff. June 8, 2008. [See T48 §3-122 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 31, 2007:

The Environmental Control Board (ECB) had a Public Hearing on October 22, 2007, on proposed revisions of its Penalty Schedules. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above.

(1) The Board has amended the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to increase the penalties for second and third offenses of subdivision (e) of §16-120 of the New York City Administrative Code. These entries are being added in light of the enactment of Local Law 42 of 2007. The Local Law amends subdivisions (e) and (f) of §16-120 of the New York City Administrative Code. This section currently authorizes DSNY to issue violations to persons who deposit household or commercial

refuse or liquid waste in public litter baskets. The Local Law amends subdivision (e) of §16-120 of the Administrative Code by creating a rebuttable presumption that the person whose name, or other identifying information, appears on any household or commercial refuse or liquid wastes deposited in such public litter basket violated that subdivision.

This Local Law also amends §16-120(f) in relation to increasing penalties for dumping household and commercial refuse into public litter baskets. Specifically, it creates a separate repeat violator scheme for those who violate subdivision (e) of §16-120 by improperly using public litter baskets. Accordingly, the Board is amending the Sanitation Penalty Schedule found in §3-122 of Subchapter G of Chapter 3 of Title 48 of The Rules of the City of New York to reflect the higher penalty ranges set out in the Local Law for repeat violations of subdivision (e).

(2) The Board has amended the Department of Transportation Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of The Rules of the City of New York to add ten new charges for violations of §2-14 of Chapter 2 of Title 34 of The Rules of the City of New York (the "Highway Rules") pertaining to Temporary Festoon/Holiday Lighting and/or other Temporary Lighting.

The establishment of these new charges and associated penalties will effectuate the enforcement of §2-14. Enforcement of these provisions will aid in minimizing electrical hazards on the City streets and sidewalks and will also make contractors more consistent in their work and provide increased public safety. These new charges and penalties will also serve as a deterrent to those who may disregard and violate §2-14, thereby potentially endangering public safety by creating a potential for stray voltage conditions and/or obstructing the function and visibility of traffic control devices.

These ten new charges are as follows: (a) Failure to maintain and/or replace weatherproof receptacle as necessary for holiday/temp. lighting; (b) Failure to obtain and maintain the required insurance for holiday/temp. lighting; (c) Failure to obtain a DOT permit prior to commencing work for holiday/temp. lighting; (d) Failure to remove temporary lighting and related equipment when required for holiday/temp. lighting; (e) Use of electrical services exceeding 120 volts and/or fused larger than 15 amperes for holiday/temp. lighting; (f) Failure to comply with minimum height clearances for holiday/temp. lighting; (g) Supporting or secured holiday/temp. lighting to a fire escape or drainpipe; failure to insulate temporary lighting; (h) Failure to obtain DOT approval for adjustments to work on holiday/temp. lighting; (i) Failure to perform changes mandated by the Department on holiday/temp. lighting and (j) Failure to certify work for holiday/temp. lighting.

2. Statement of Basis and Purpose in City Record Dec. 9, 2008: The Environmental Control Board (ECB) had a Public Hearing on November 6, 2008 on proposed revisions of its Department of Transportation Penalty Schedule. Neither written material nor testimony was presented at the Public Hearing on the proposed rule revisions to the ECB's Penalty Schedules as set forth above. The Board has amended the Department of Transportation Penalty Schedule found in §31-124 of Subchapter G of Chapter 31 of Title 15 of the Rules of the City of New York to change the numbering of three sections to reflect the re-numbering of those sections that was effected by a Final Rule promulgated by the New York City Department of Transportation on June 7 of 2007. Specifically, §34 RCNY 2-11(e)(12)(xi) is renumbered 34 RCNY 2-11(e)(12)(x); §34 RCNY 2-11(e)(12)(ix) is renumbered 34 RCNY 2-11(e)(12)(viii); and §34 RCNY 2-11(e)(12)(x) is renumbered 34 RCNY 2-11(e)(12)(ix). The descriptions and penalties for these charges remain the same.

3. Statement of Basis and Purpose in City Record Oct. 2, 2009: The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on the addition of nineteen new charges for violations of Chapter 2 of Title 34 of the Rules of the City of New York (RCNY) (the "Highway Rules) to the Department of Transportation (DOT) Penalty Schedule found in §3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In Section 1, ECB has added three charges alleging violations of §34 RCNY 2-09 (f)(4). With regard to 34 RCNY 2-09 (f)(4)(viii), "Failure to fully replace defective sidewalk flag," DOT rules require that sidewalk flags shall be 5'x 5' where feasible and that all flags containing substantial defects (as defined in §19-152 of the New York City Administrative Code) be fully replaced. In general, sidewalk flags that are

patched or not installed/repaired fully fail to withstand yearly freeze and thaw cycles and cause a weakening of the surrounding area. With regard to 34 RCNY 2-09 (f)(4)(xiv), "Failure to install pedestrian ramp as per DOT drawings," DOT rules state that any person constructing, reconstructing or repairing a corner shall install pedestrian ramps in accordance with the specifications and in accordance with the latest revision of Standard Drawing H-1011. With regard to 34 RCNY 2-09 (f)(4)(xvi)(A), "Failure to repair distinctive sidewalk in kind," DOT rules require that sidewalks of a distinctive design or material may be permitted and shall harmonize with the architecture of the abutting building and/or area. In areas where various community boards or Business Improvement Districts have restored areas to landmark status or installed distinctive designs, the restorations must conform to the specifications established and match the surrounding area. In section 2, ECB has added eleven charges alleging violations of §34 RCNY 2-11(e). With regard to 34 RCNY 2-11(e)(11)(iv), "Failure to use correct ratio of asphalt binder," DOT rules allow that on a non-protected or resurfaced street, asphalt binder base may replace concrete, at a thickness ratio of one and one half inch of asphalt for every inch of concrete. This new charge will encourage contractors to be consistent in their work and foster public safety. With regard to 34 RCNY 2-11(e)(11)(v), "Failure to restore concrete base at same grade as existing base," DOT rules require that the concrete base shall be restored at the same grade as the existing base; at no time may it be brought up to the asphalt course unless authorization has been granted by the commissioner. Installing concrete into the asphalt course causes major damage to milling machines, causing delays and costly repairs. With regard to 34 RCNY 2-11(e)(11)(vi), "Installing asphalt other than binder as a base course," DOT rules require that binder base shall be restored to the existing base. At no time will asphalt other than binder be permitted as a base course, unless otherwise authorized by the Commissioner. Binder and wearing course are identified by the permittee's designs. Binder is used as a base material typically containing larger stones to form a mixture suitable to create a stable base. Wearing course is designed to contain smaller stones to produce a smooth surface; its use is strictly reserved as a riding surface. Establishment of a penalty for violation of this provision will foster improvement in the quality of paving and restoration work performed on the streets of New York City. With regard to 34 RCNY 2-11(e)(11)(vii), "Installation of shallow conduit without department approval," DOT rules state that if conduits in the roadway are installed less than 18 inches below the roadway surface or not below the base, the permittee must file a written request and receive written approval from the department. This rule will assist DOT in maintaining a database indicating where contractors have installed shallow conduits thus enabling the DOT to notify the utilities that have placed shallow conduits that DOT will be working in those areas. Establishment of a penalty for violation of this provision will foster protection of the existing infrastructure. With regard to 34 RCNY 2-11(e)(12)(iii), "Failure to provide minimum thickness of wearing course on full depth asphalt restoration," DOT rules require that the minimum thickness of the wearing course on full depth asphalt restoration shall be two inches (2"). Failure to apply the minimum requirement of asphalt greatly reduces the longevity of the riding surface, and can promote rapid decay of the riding surface. 2" is the absolute minimum required thickness. With regard to 34 RCNY 2-11(e)(12)(v), "Failure to restore entire pavement between street opening and curb," DOT Rules require that when a street opening is twelve inches or less from the curb, the entire pavement between the opening and the curb shall be excavated and replaced in kind. Failure to restore this area will promote cracking of the street surface and increase the possibility of water penetration. Restoring the roadway as a cohesive unit greatly reduces this risk. With regard to 34 RCNY 2-11 (e)(12)(vi), "Failure to restore street in kind (non-historic district)," DOT rules require that whenever any street is excavated, the permittee shall restore such street in kind as to material type, color, finish or distinctive design. It is necessary to restore the roadway to its prior condition so as to not disrupt the overall design and integrity of the existing pavements. With regard to 34 RCNY 2-11(e)(12)(ix), "Installing Construction Signs w/o a Permit, " DOT rules require contractors to obtain permits whenever they change or remove the existing parking regulations signs. Establishing a penalty for violation of this provision will facilitate the return of parking spaces to public use when construction is completed. With regard to 34 RCNY 2-11(e)(13)(ii), "Failure to restore concrete pavement at the same depth, strength and finish as original pavement," DOT rules require that the concrete restoration shall have the same depth, strength, and finish as the original pavement. Failure to meet any of these criteria will cause the concrete to break creating a defective restoration. Establishment of a penalty for violation of this provision will foster improvement in the quality of paving and restoration work performed on the streets of New York City. With regard to 34 RCNY 2-11(e)(13)(v), "Installing asphalt on a concrete street or concrete bus stop area," DOT rules state that asphalt restorations will not be permitted in concrete streets or concrete bus stop areas. Concrete roadways are designed to maintain a riding surface for many years, as well as to carry the additional weight of surface

traffic. Cutting into the roadway laterally or horizontally through individual concrete panels or expansion joints weakens the riding surface and surrounding joints. Asphalt fails to bond adequately with the existing concrete, thus allowing water penetration and movement of the riding surface. With regard to 34 RCNY 2-11(e)(14)(iii), "Failure to install a color coding marker at the end of the restoration," DOT rules require permittees to place color codes or tags at job sites when they complete final restorations. This facilitates identification of the responsible party in the event a street restoration fails. In §3, the Board has added five charges alleging violations of §34 RCNY 2-14(f). With regard to 34 RCNY 2-14(f)(4)(i), "Commercial refuse cont. stored/placed in `No Stopping,' `No Standing,' or `No Parking Anytime' area," since the introduction of 311, there has been an increase in the number of complaints involving non-construction containers placed on City streets. The addition of this charge to the penalty table will help with enforcement designed to maintain traffic flow in accordance with existing parking regulations. With regard to 34 RCNY 2-14(f)(4)(ii), "Commercial refuse container stored/placed within fifteen feet of a hydrant," the addition of this charge to the penalty table will help with enforcement designed to maintain traffic flow in accordance with existing parking regulations and allow easy access to the hydrant in case of an emergency. With regard to 34 RCNY 2-14(f)(6), "Improperly labeled commercial refuse container, " DOT rules require container owners to properly label their containers. This facilitates identification of the container owner in the event of a problem with the container. With regard to 34 RCNY 2-14(f)(9), "Commercial refuse container w/o proper reflective markings on all four sides," DOT rules require that containers have proper reflective markings so that they are visible to drivers, bicyclists and pedestrians at night. With regard to 34 RCNY 2-14(f)(11), "Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks or driveway," DOT rules require sidewalks, gutters, crosswalks and driveways to be kept clear and unobstructed at all times and that all dirt, debris and rubbish be promptly removed therefrom. Establishment of a penalty for violation of this provision will help to maintain traffic flow and proper drainage.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-125

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-125 Vehicle and Traffic Law Penalty Schedule.

VEHICLE AND TRAFFIC LAW PENALTY SCHEDULE

All Citations are to the NY State Vehicle and Traffic Law.

* Pursuant to §3-81(b), a late admit fee of $30.00 will be added to the penalty for this charge for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing of the default order issued against respondent.

A repeat violation is a violation by the same respondent occurring within 18 months of the date of occurrence of the previous violation. The previous violation may have been for the placement of a handbill on any motor vehicle.

Section/Rule Description Penalty Default

1224(7)* Abandoning a vehicle 250 1,000

375(1)(b) Illegal placement of handbills on windshields or underwindshield wipers of motor vehicles. 75 100

2nd Offense 150 200

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-125) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Second unnumbered par amended City Record May 14, 2009 §3, eff. June 13, 2009. [See T48 §3-123 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of

Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been

delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

Rules of the City of New York

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

48 RCNY 3-126

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-126 Water Penalty Schedule.

WATER PENALTY SCHEDULE

All citations preceded by "A.C." are to the New York City Administrative Code. All other citations are to Title 48 of the Rules of the City of New York.

* If a respondent charged with a violation of 20-04(e) submits the annual test report by the first hearing date, the penalty shall be mitigated from $350 to $0 (zero). The possibility of such mitigation exists only in connection with the first NOV issued to a given respondent for 20-04(e) charge.

Pursuant to §3-81(b), a late admit fee of $30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

Section Description Penalty Default

Stage I Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 400 1,000

A.C. 24-337 Waste of city water (residential) 250 1,000

21-06 Failure to post "Save Water" signs 100 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 100 1,000

21-08 Improper use of well water 250 1,000

21-09(a) Allowing leak or waste of water from faucets, valves, pipes etc. 250 1,000

21-09(b) Using public water to wash vehicles. 250 1,000

21-09(c) Using water to spray or wash sidewalk, street 250 1,000

21-09(d) Using any water for ornamental purposes 250 1,000

21-09(e) Using water for lawns, golf course, plants, trees 250 1,000

21-09(f) Illegal use of fire hydrants 750 1,000

21-09(g) Serving water without request 250 1,000

21-09(h) Use of public water for pools 250 1,000

21-09(i) Use of noncompliant showerhead 250 1,000

Stage II Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 500 1,000

A.C. 24-337 Waste of city water (residential) 350 1,000

21-06 Failure to post "Save Water" signs 200 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 200 1,000

21-08 Improper use of well water 350 1,000

21-10(a) Allowing leak or waste of water from faucets, valves, pipes etc. 350 1,000

21-10(b) Using public water to wash vehicles 350 1,000

21-10(c) Using water to spray or wash sidewalk, street 350 1,000

21-10(d) Using any water for ornamental purposes 350 1,000

21-10(e) Using water for lawns, golf course, plants, trees 350 1,000

21-10(f) Illegal use of fire hydrants 750 1,000

21-10(g) Serving water without request 350 1,000

21-10(h) Use of public water for pools 350 1,000

21-10(i) Use of noncompliant showerhead 350 1,000

Stage III Drought Emergency

A.C. 24-337 Waste of city water (commercial or industrial) 600 1,000

A.C. 24-337 Waste of city water (residential) 450 1,000

21-06 Failure to post "Save Water" signs 300 1,000

21-07 Failure to post Water-Conserving Irrigation System sign 400 1,000

21-08 Improper use of well water 550 1,000

21-11(a) Allowing leak or waste of water from faucets, valves, pipes etc. 550 1,000

21-11(b) Using public water to wash vehicles 550 1,000

21-11(c) Using water to spray or wash sidewalk, street 550 1,000

21-11(d) Using any water for ornamental purposes 550 1,000

21-11(e) Using water for lawns, golf course, plants, trees 550 1,000

21-11(f) Illegal use of fire hydrants 750 1,000

21-11(g) Serving water without request 550 1,000

21-11(h) Use of public water for pools 950 1,000

21-11(i) Use of noncompliant showerhead 450 1,000

21-11(j) Use of non-air cooled air conditioning system using public water with temperature below 79 F. 550 1,000

Other Water Regulations

AC 24-308 Illegal Use of Hydrant(s) 750 1,000

AC 24-337 Illegal waste of water (Residential) 250 1,000

AC 24-339 Distribution/Sale/Import/Installation of water wasting plumbing fixtures 475 1,000

A.C. 24-346(b) Failed to comply with Commissioner's Order 750 1,000

20-01(b)(1) Plumbing work w/o permit 250 1,000

20-01(e) Failed to produce permit on demand 150 1,000

20-01(f) Failed to obtain/return emergency permit 250 1,000

20-02(b) Unlawful connection to City main 700 1,000

20-04(d) Failed to install a backflow preventer 700 1,000

20-04(e) Failed to submit an annual test report for a backflow preventer 500 ormitigationpen. of $0* 1,000

20-05(a) No meter in place 250 1,000

20-05(b)(1) Meter repair/removal w/o permit 350 1,000

20-05(b)(2) Failed to return meter permit 350 1,000

20-05(d)(5) No reading receptacle for remote pad 250 1,000

20-05(g) Improper size/type of meter 250 1,000

20-05(i)(1) Meter not readily accessible 250 1,000

20-05(i)(2-12) Improper setting of meter 250 1,000

20-05(j) Prohibited meter bypass 500 1,000

20-05(k) Improper meter pit/box/vault construction 350 1,000

20-05(n) Breaking seal on equipment w/o permit 500 1,000

20-05(p) Inadequate protection of meter/remote receptacle/AMR Transmitter/wiring 250 1,000

20-06 A.C./refrigeration violation 350 1,000

20-07(c) Failed to submit self-certification of domestic water service pipe installation 250 1,000

20-08(a)(6) Lawn/garden watering prohibited time/manner 150 1,000

20-08(a)(7) Sidewalk flushing prohibited time/manner 150 1,000

20-08(a)(9) Prohibited use of water for car washing 150 1,000

15 RCNY Chap. 20 Violation of miscellaneous rules regarding use and supply of water 150 1,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record May 4, 2007 §2, eff. June 3, 2007. [See T48 §3-115 Note 1]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Third unnumbered par amended City Record May 14, 2009 §4, eff. June 13, 2009. [See T48 §3-123 Note 1]

Other Water Regulations

A.C. 24-346(b) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See Note 1]

20-04(e) added City Record Dec. 24, 2009 §2, eff. Jan. 23, 2010. [See Note 1]

20-05(i)(1) amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010. [See Note 1]

20-05(i)(2-12) amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010. [See Note 1]

20-05(p) amended City Record Dec. 24, 2009 §4, eff. Jan. 23, 2010. [See Note 1]

20-07(c) added City Record Dec. 24, 2009 §5, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(6) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(7) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

20-08(a)(9) amended City Record Dec. 24, 2009 §6, eff. Jan. 23, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2009:

The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on various amendments to the Water Penalty Schedule found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented.

The Department of Environmental Protection (DEP) recently promulgated amendments to 15 RCNY Chapter 20, Rules Governing and Restricting the Use and Supply of Water. These amendments were promulgated in order to reflect changes in technology related to metering, water service and connections and permit tracking. As a result, ECB's Water Penalty Schedule, found in §3-126 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York has been revised. Other changes, reflecting current DEP rules and operations are included in this final rule.

In §1 of the final rule, the Board has added a new charge for Failure to Comply with Commissioner's Orders. The Bureau of Water & Sewer Operations routinely issues Commissioner's Orders related to compliance with backflow prevention and other requirements. The addition of a penalty for this section to ECB's Water Penalty Schedule will enable DEP to better protect the City's water supply.

In §2 of the final rule, the Board has increased the penalty for §15 RCNY 20-04(e), "Failed to submit an annual test report for a backflow preventer" from $350 to $500. This change is needed because the lower penalty of $350 was an insufficient incentive to achieve compliance by building owners because the cost of the test was more than the penalty.

In §§3, 4 and 6 of the final rule, the Board has renumbered certain sections to conform to changes in DEP's amended rules.

In §5 of the final rule, the Board has added a new charge for a violation of §15 RCNY20-07(c), "Failure to submit self-certification of domestic water service pipe installation." This section provides that if DEP waives its right to conduct a non-mandatory inspection of domestic water service pipe installation, the Licensed Master Plumber must submit the tap location with certification that all work was performed in accordance with the water rules and all other applicable rules.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules

contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
7

[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for

implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

172 of 198 DOCUMENTS

Rules of the City of New York

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

48 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 4 FITNESS AND DISCIPLINE HEARINGS FOR OATH EMPLOYEES*1

§4-01 Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings.

The chief administrative law judge or, upon his or her designation, an administrative law judge, shall conduct administrative hearings regarding OATH employees' fitness and discipline pursuant to N.Y. Civil Service Law, §§71-75, and pursuant to Charter, §1049(1). If such a hearing is conducted by an administrative law judge other than the chief administrative law judge, the administrative law judge shall make written proposed findings of fact and a recommended decision. The chief administrative law judge shall review the proposed findings and recommendations of the administrative law judge and shall make the final findings of fact and decision in the matter being adjudicated.

HISTORICAL NOTE

Section renumbered (former §3-01) City Record Nov. 24, 2008 §2, eff. Nov. 24, 2008 per City Record notice. [See T48 Chapter 1 footnote]

Section amended City Record Oct. 19, 2005 §4, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 4 renumbered (former Chapter 3) City Record Nov. 24, 2008 §2, eff. Nov. 24, 2008 per City Record notice. [See T48 Chapter 1 footnote]

Rules of the City of New York

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

48 RCNY 4 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

Preamble

Pursuant to §13-a of the City Charter, these Rules are promulgated by the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings to establish a code of conduct governing the activities of all administrative law judges and hearing officers in City tribunals.

Administrative law judges and hearing officers (collectively referred to as "City administrative law judges" in

these Rules) and the tribunals on which they serve play a vital role in our City. City tribunals are responsible for the fair enforcement of laws that, among other things, maintain the quality of life in the City, combat discrimination, allow taxpayers to challenge their assessments and ensure that certain government programs and benefits are not wrongly denied to those entitled to them. An appearance before a City tribunal may be one of the most significant occasions on which a City resident directly encounters government authority.

The Rules that follow are based on the Code of Judicial Conduct, particularly as set forth in the Rules of the Chief Administrator of the Courts for the State of New York at 22 N.Y.C.R.R. §100 et seq. (2006). The position of City administrative law judge has much in common with that of any other judge in the State Courts. In certain important respects, however, the position of City administrative law judge is different, which is why the Code of Judicial Conduct has been adapted in these Rules rather than applied generally. Some City tribunals are independent entities, but most often a City tribunal is legally and organizationally part of a City agency. The City tribunals covered by the Rules employ administrative law judges in various ways. For example, in some City tribunals administrative law judges are regular, salaried City employees; in other tribunals, administrative law judges are per diem employees whose work for the City may be part-time. In some tribunals, the administrative law judge has great autonomy to manage and decide each matter that comes before him or her. In other tribunals, the scope of the administrative law judge's assignment may be narrower. But it is always critical, of course, that the process of adjudication be fair, impartial and free of improper influences.

HISTORICAL NOTE

Preamble added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct

is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

48 RCNY 100

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§100 Terminology

Terms used in these Rules are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by any public election, including primary and general elections and including partisan and nonpartisan elections. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions.

(B) A "City administrative law judge" is an administrative law judge, hearing examiner, hearing officer or any other person who conducts or participates in the decision of adjudicative proceedings within a City tribunal. The term "City administrative law judge" does not include members of boards or commissions. The term "City administrative law judge" also does not include the head of an agency, unless the agency is a City tribunal.

(C) A "City tribunal" is any City agency or any unit within a City agency that is authorized or charged by law with responsibility for conducting adjudicative proceedings. "City tribunals" to which these Rules are applicable include the tribunals constituting or within the Department of Consumer Affairs, the Department of Finance, the Department of Health and Mental Hygiene, the Environmental Control Board, the Office of Administrative Trials and Hearings, the Police Department, the Tax Appeals Tribunal, the Taxi and Limousine Commission and any similar agencies or units.

(D) "Closely related" means that the relationship between one person and another is that of parent and child; siblings; grandparent and grandchild; great-grandparent and great-grandchild; first cousins; or aunt/uncle and

niece/nephew.

(E) A "domestic partner" is a member of a domestic partnership registered pursuant to Administrative Code §3-240 or in accordance with Executive Order 123 of 1989 or Executive Order 48 of 1993 or a member of a marriage that is not recognized by the State of New York or of any domestic partnership or civil union entered into in another jurisdiction.

(F) "Economic interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, provided that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities or in the manager of such fund unless the City administrative law judge participates in the management of the fund or a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(2) service as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a spouse, domestic partner or child as an officer, director, advisor or other active participant in any such organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the City administrative law judge could substantially affect the value of the securities;

(5) a "de minimis" interest is one so insignificant that it could not raise reasonable questions as to a City administrative law judge's impartiality.

(G) An "ex parte communication" is a communication that concerns a pending or impending proceeding before a City administrative law judge and occurs between the City administrative law judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.

(H) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian.

(I) "Impartial" means without bias or prejudice in favor of, or against, particular parties or classes of parties, and with an open mind in considering issues that may come before the City administrative law judge.

(J) An "impending proceeding" is one that has not yet been commenced but is reasonably foreseeable and not merely hypothetical.

(K) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character; it also denotes a firm adherence to these Rules and their standard of values.

(L) To "know" is to have actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(M) A "member of the City administrative law judge's family" is a spouse, domestic partner, child, grandchild, parent, grandparent, sibling or any other person with whom the City administrative law judge maintains a comparable relationship.

(N) "Nonpublic information" is confidential information of which a City administrative law judge becomes aware

as a result of his or her judicial duties and which is not otherwise available to the public.

(O) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(P) A "political organization" is a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(Q) "Primarily employed by the City" means employed on a full-time basis or the equivalent or regularly scheduled to work the equivalent of 20 hours per week at one or more City tribunals.

(R) "Require." Where these Rules prescribe that a City administrative law judge "require" certain conduct of others, the term "require" means that a City administrative law judge is to exercise reasonable direction and control over the conduct of those persons subject to his or her direction and control.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most

significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

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(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

48 RCNY 101

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§101 A City Administrative Law Judge Shall Uphold the Integrity of the Tribunal on Which He or She Serves.

The administration of justice in our City depends on tribunals that adjudicate fairly, without partiality, prejudgment or impropriety. A City administrative law judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity of the tribunal on which he or she serves will be preserved. The provisions of these Rules are to be construed and applied to further that objective. Persons covered by these Rules remain subject to Chapter 68 of the City Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions. To the extent that these Rules conflict with the provisions of Chapter 68 or the rules or opinions of the Conflicts of Interest Board, the provisions of Chapter 68 and the rules and opinions of the Conflicts of Interest Board shall take precedence unless these Rules are more restrictive. Persons covered by these Rules remain subject to Executive Order 16 of 1978 and amendments thereto, and to all other applicable City rules and executive orders. Nothing in these Rules shall limit the duty of City administrative law judges to comply with Chapter 68, the rules and opinions of the Conflicts of Interest Board, Executive Order 16 of 1978 and amendments thereto, and any additional obligations imposed by rules, guidelines or directives issued by agencies or tribunals, or the duty of administrative law judges in the Office of Administrative Trials and Hearings ("OATH") to comply with the Code of Judicial Conduct as set forth in the Rules of the Chief Administrative Judge of the Courts for the State of New York, 22 N.Y.C.R.R. §100 et seq.

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The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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Rules of the City of New York

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

48 RCNY 102

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§102 A City Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of His or Her Activities.

(A) A City administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of City tribunals.

(B) A City administrative law judge shall not allow family, social, political or other relationships to influence his or her judicial conduct or judgment.

(C) A City administrative law judge shall not lend the prestige of judicial office to advance the private interests of the City administrative law judge or others; nor shall a City administrative law judge convey to others, or permit others to convey, the impression that they are in a special position to influence him or her.

(D) A City administrative law judge shall not testify voluntarily as a character witness before a City tribunal on which he or she serves.

(E) A City administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status, or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291. This provision does not prohibit a City administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other

values of legitimate common interest to its members.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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Rules of the City of New York

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

48 RCNY 103

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§103 A City Administrative Law Judge Shall Perform His or Her Judicial Duties Impartially and Diligently.

(A) Adjudicative responsibilities.

(1) A City administrative law judge shall be faithful to the law and maintain professional competence in it. A City administrative law judge shall not be swayed by partisan interests, public clamor or fear of public criticism.

(2) A City administrative law judge shall require order and decorum in proceedings before him or her.

(3) A City administrative law judge shall be patient, dignified and courteous to the parties, representatives, witnesses and others with whom the City administrative law judge deals in an official capacity and shall require similar conduct of others subject to his or her direction and control.

(4) A City administrative law judge shall accord to every party to a proceeding, or to that party's representative, the right to be heard according to law.

(5) A City administrative law judge shall perform judicial duties with impartiality. A City administrative law judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status, and shall require City tribunal staff and

others subject to the City administrative law judge's direction and control to refrain from such words or conduct.

(6) A City administrative law judge shall require the parties and their representatives in proceedings before him or her to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others based upon actual or perceived age, race, creed, color, gender (including gender identity), sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status or any other protected status enumerated in the City Human Rights Law, Administrative Code §8-101, or the State Human Rights Law, Executive Law §291, or socioeconomic status. This provision does not preclude legitimate advocacy when age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, domestic partnership status, alienage or citizenship status, military status, socioeconomic status or any other similar factor is an issue in the proceeding.

(7) A City administrative law judge shall not initiate, permit or consider ex parte communications, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, if the City administrative law judge (i) reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) insofar as practical and appropriate, provides for prompt notification of other parties or their representatives of the substance of the ex parte communication and allows an opportunity to respond.

(b) A City administrative law judge, with the consent of the parties, may confer separately with the parties and their representatives on agreed-upon matters.

(c) A City administrative law judge may initiate or consider any ex parte communications when authorized by law to do so.

(8) A City administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have his or her case fully heard on all relevant points.

(a) Among the practices that a City administrative law judge may appropriately follow and may find helpful in advancing the ability of a litigant not represented by an attorney or other relevant professional to be fully heard are the following: (i) liberally construing and allowing amendment of papers that a party not represented by an attorney has prepared; (ii) providing brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted; (iii) providing brief information about what types of evidence may be presented; (iv) being attentive to language barriers that may affect parties or witnesses; (v) questioning witnesses to elicit general information and to obtain clarification; (vi) modifying the traditional order of taking evidence; (vii) minimizing the use of complex legal terms; (viii) explaining the basis for a ruling when made during the hearing or when made after the hearing in writing; (ix) making referrals to resources that may be available to assist the party in the preparation of the case.

(b) A City administrative law judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between a City administrative law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communications contained in the preceding paragraph.

(9) A City administrative law judge shall dispose of all judicial matters promptly, efficiently and fairly.

(10) A City administrative law judge shall not make any public comment about a pending or impending proceeding in any City tribunal. This paragraph does not prohibit a City administrative law judge from making authorized public statements in the course of his or her official duties or from explaining for public information the procedures of the tribunal. This paragraph does not apply to proceedings in which the City administrative law judge is a litigant or a representative of a litigant.

(11) A City administrative law judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A City administrative law judge shall not disclose, or use for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(B) Administrative responsibilities.

(1) A City administrative law judge shall diligently discharge his or her administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and cooperate with other City administrative law judges and tribunal staff in the administration of judicial business.

(2) A City administrative law judge shall require tribunal staff subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the City administrative law judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(C) Disciplinary responsibilities.

(1) A City administrative law judge who receives information indicating a substantial likelihood that another City administrative law judge has committed a substantial violation of these Rules shall promptly report such information to the head of the tribunal, the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH, or, as applicable, to the official occupying any successor position. In addition, a City administrative law judge must comply with any agency rules requiring the reporting of such information within the agency or tribunal.

(2) If, in the course of performing judicial duties, a City administrative law judge receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility the City administrative law judge shall take appropriate action.

(3) Acts of a City administrative law judge in the discharge of disciplinary responsibilities are part of his or her judicial duties.

(D) Disqualification.

(1) A City administrative law judge shall disqualify himself or herself in a proceeding in which the City administrative law judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the City administrative law judge has a personal bias or prejudice concerning a party; or (ii) the City administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) (i) the City administrative law judge, while in private practice, is serving or has served as a lawyer in the matter in controversy; (ii) the City administrative law judge knows that a lawyer with whom he or she was associated in private practice served during that association as a lawyer in the matter in controversy; (iii) the City administrative law judge knows that a lawyer with whom he or she is associated in private practice is serving as a lawyer in the matter in controversy; or (iv) the City administrative law judge knows that he or she or a lawyer with whom he or she was or is associated in private practice has been or will be a material witness in the matter in controversy;

(c) the City administrative law judge has served in governmental employment and in such capacity participated as counsel, advisor or material witness in the matter in controversy;

(d) the City administrative law judge knows that he or she, individually or as a fiduciary, or the City administrative law judge's spouse or domestic partner, or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person: (i) is a party to the proceeding; (ii) is an officer, director or trustee of a party; (iii) has an economic interest in the subject matter in controversy; or (iv) has any other interest that could be substantially affected by the proceeding;

(e) the City administrative law judge knows that the City administrative law judge or his or her spouse, domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding;

(f) the City administrative law judge has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the City administrative law judge's adjudicative capacity that commits the City administrative law judge with respect to (i) an issue in the proceeding, or (ii) the parties or controversy in the proceeding;

(g) notwithstanding the provisions of subparagraph (d) above, if a City administrative law judge would be disqualified because of the appearance or discovery, after the matter was assigned to the City administrative law judge, that the City administrative law judge, individually or as fiduciary, or the City administrative law judge's spouse or domestic partner or a person known by the City administrative law judge to be closely related to either of them, or the spouse of such person, has an economic interest in the subject matter in controversy, disqualification is not required if the City administrative law judge, spouse, domestic partner or other relevant person, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A City administrative law judge shall keep informed about his or her personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of his or her spouse or domestic partner and minor children residing in the City administrative law judge's household.

(E) Remittal of disqualification.

(1) A City administrative law judge disqualified by the terms of subdivision (D) above may disclose on the record the basis for his or her disqualification. Thereafter, subject to paragraph (2) below, if the parties who have appeared and not defaulted and their representatives, without participation by the City administrative law judge, all agree that the City administrative law judge should not be disqualified, and the City administrative law judge believes that he or she will be impartial and is willing to participate, the City administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(2) Notwithstanding paragraph (1) above, disqualification of a City administrative law judge shall not be remitted if participation in the proceeding by the City administrative law judge would violate Chapter 68 of the Charter or if the basis for disqualification is that:

(a) the City administrative law judge has a personal bias or prejudice concerning a party;

(b) the City administrative law judge, while in private practice, served as a lawyer in the matter in controversy;

(c) the City administrative law judge has been or will be a material witness concerning the matter in controversy; or

(d) the City administrative law judge or his or her spouse or domestic partner is a party to the proceeding or is an officer, director or trustee of a party to the proceeding.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. License revocation hearing was adjourned to give respondent, a for hire driver, an opportunity to secure counsel. Section 103(A)(8) of the Rules of Conduct for Administrative Law Judges directs judges take steps to ensure that unrepresented parties have the opportunity to have his or her case fully heard. Among the steps the judge took was giving respondent time to secure counsel, obtaining a translator for the hearing, and permitting continued cross-examination of the complaining witness after respondent hired an attorney. **Taxi & Limousine Comm'n v. Martinez**, OATH Index No. 1183/07 (Apr. 11, 2007).

FOOTNOTES

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Rules of the City of New York

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

48 RCNY 104

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§104 A City Administrative Law Judge Shall Conduct His or Her Extra-Judicial Activities so as to Minimize the Risk of Conflict with Judicial Obligations.

(A) Extra-judicial activities in general. A City administrative law judge shall conduct all of his or her extra-judicial activities so that they:

(1) do not cast reasonable doubt on the City administrative law judge's capacity to act impartially as a City administrative law judge;

(2) do not detract from the dignity of judicial office;

(3) do not interfere with the proper performance of judicial duties; and

(4) are not incompatible with judicial office.

(B) Governmental, civic or charitable activities.

(1) A City administrative law judge shall not appear at a public hearing before an executive or legislative body or official if doing so would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her unless the issue or party is one with respect to which the City administrative law judge would in any event be disqualified under these Rules or any other provision of law.

(2) In connection with civic or charitable activities, a City administrative law judge may participate in fund-raising

or solicitation for membership if:

(a) the City administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;

(b) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the City administrative law judge;

(c) the City administrative law judge's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office;

(d) the fund-raising or solicitation for membership is not prohibited by Chapter 68 of the City Charter or any other provision of law.

(3) A City administrative law judge shall not accept:

(a) appointment to a governmental committee or commission or other governmental position if his or her activity in such capacity would cast doubt on his or her ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before him or her; or

(b) appointment or employment as a peace officer or police officer, as those terms are defined in Criminal Procedure Law §1.20, unless he or she is a member of the uniformed force of the police department exercising adjudicative duties.

(4) If not otherwise prohibited by Chapter 68 of the Charter or any other provision of law, a City administrative law judge may be a member or serve as an officer, director, trustee or advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of these rules.

(a) A City administrative law judge shall not serve as an officer, director, trustee or advisor if it is likely that (i) the organization will be engaged in proceedings that ordinarily would come before the City administrative law judge or (ii) such service will involve the City administrative law judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the City tribunal on which the City administrative law judge serves.

(b) A City administrative law judge may be listed as an officer, director, trustee or advisor of such an organization, provided that such listing on letterhead or elsewhere does not include the City administrative law judge's judicial designation unless comparable designations are listed for other persons.

(C) Financial activities.

(1) A City administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to reflect adversely on the City administrative law judge's impartiality or exploit his or her judicial position;

(b) involve the City administrative law judge with any business, organization or activity that ordinarily would come before him or her; or

(c) involve the City administrative law judge in frequent transactions or continuing business relationships with those lawyers or other persons who regularly come before the tribunal on which the City administrative law judge serves.

(2) A City administrative law judge shall manage his or her investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as he or she can do so without serious financial detriment, the City administrative law judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(3) A City administrative law judge shall not accept, and shall urge members of his or her family residing in the City administrative law judge's household not to accept, a gift, bequest, favor or loan from anyone, unless such gift, bequest, favor or loan is permitted by Chapter 68 of the Charter and any other applicable provision of law and is:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the City administrative law judge and his or her guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner or other family member of a City administrative law judge residing in the City administrative law judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the City administrative law judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the City administrative law judge in the performance of judicial duties;

(c) a gift which is customary on family and social occasions;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or friend whose appearance or interest in a case would in any event require disqualification under §103(D) of these Rules;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not City administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to any other applicants; or

(h) any other gift, bequest, favor or loan, unless the donor is a party or other person who has come or is likely to come before the City administrative law judge or the City administrative law judge knows the donor is or intends to become engaged in business dealings with the City. Any gift received under this subparagraph that exceeds $1,000.00 must be reported to the Administrative Justice Coordinator in the Office of the Mayor or, as applicable, to the official occupying any successor position.

(D) Fiduciary activities. The same restrictions on financial activities that apply to a City administrative law judge personally also apply to the City administrative law judge while acting in a fiduciary capacity.

(E) Service as arbitrator or mediator. A City administrative law judge may act as an arbitrator or mediator, consistent with Chapter 68 of the Charter and the rules and opinions issued by the Conflicts of Interest Board interpreting those provisions and any applicable agency or tribunal rules, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(F) Practice of law.

(1) Consistent with all other provisions of these Rules, with Chapter 68 of the Charter and the rules and opinions of the Conflicts of Interest Board, any applicable agency or tribunal rules and with all other provisions of law, a City

administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the City administrative law judge nor the conduct of his or her official duties.

(2) A City administrative law judge shall not represent or appear on behalf of private interests before the City tribunal on which he or she serves.

(3) A City administrative law judge primarily employed by the City shall not represent or appear on behalf of private interests before any City tribunal or agency.

(4) A City administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the City tribunal on which he or she serves.

(G) Compensation and reimbursement. A City administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by these Rules, if the source of such payments does not give the appearance of influencing the City administrative law judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a City administrative law judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the City administrative law judge and, where appropriate to the occasion, by the City administrative law judge's spouse, domestic partner or guest. Any payment in excess of such an amount is compensation.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in

determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

48 RCNY 105

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§105 A City Administrative Law Judge Shall Refrain From Inappropriate Political Activity.

(A) A City administrative law judge shall not act as a leader or hold an office in a political organization.

(B) A City administrative law judge shall not solicit funds for a political organization or candidate.

(C) A City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office, except that he or she may continue to hold office while being a candidate for election to or serving as a delegate in a State constitutional convention, if otherwise permitted by law to do so.

(D) A City administrative law judge who is a candidate for elective judicial office shall comply with the Rules of the Chief Administrator of the Courts for the State of New York governing the conduct of such candidates, 22 N.Y.C.R.R. §100.5. A determination by the State Commission on Judicial Conduct, a court of the State of New York or any other authorized entity that a City administrative law judge has violated those Rules shall constitute misconduct and may subject a City administrative law judge to discipline hereunder.

(E) A City administrative law judge who engages in any other partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves nor be in violation of Chapter 68 of the City Charter or any other applicable law.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

As amended in 2005, the New York City Charter in §13-a requires that the Mayor and the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings jointly promulgate rules of conduct for administrative law judges and hearing officers in City tribunals (collectively, "City administrative law judges"). Section 1049, subd. 2(b), specifically authorizes the Chief Administrative Law Judge to promulgate such rules in conjunction with the Mayor.

The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

(1) The final rule restricts a City administrative law judge from testifying voluntarily as a character witness in a proceeding before a City tribunal on which he or she serves.

(2) The final rule provides that a City administrative law judge is required to take appropriate action if, in the course of performing judicial duties, he or she receives information indicating a substantial likelihood that a lawyer appearing before him or her has committed a substantial violation of the Code of Professional Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate

for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

48 RCNY 106

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§106 Misconduct.

(A) A violation of these Rules may constitute misconduct and may subject a City administrative law judge to discipline.

(B) A complaint alleging that a City administrative law judge has violated these Rules may be made to the head of the City tribunal on which the City administrative law judge serves or served or to the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, to the official occupying any successor position. For purposes of this and the succeeding paragraphs of this section, a "complaint" shall include a report made pursuant to §103(C)(1) of these Rules.

(C) If the head of a City tribunal receives a complaint, he or she shall so advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position.

(D) A complaint received by the Administrative Justice Coordinator in the Office of the Mayor or the Chief Judge of OATH or, as applicable, the official occupying any successor position, shall be referred, after consultation and as appropriate, to the head of the City tribunal on which the City administrative law judge serves or served, to the Conflicts of Interest Board and/or to the Department of Investigation. A complaint concerning the head of a tribunal located within a City agency may also be referred, after consultation and as appropriate, to the head of such agency. A complaint concerning the head of a tribunal not located within a City agency may be referred by the Administrative Justice Coordinator in the Office of the Mayor or the official occupying any successor position, to the Mayor or the

Mayor's designee.

(E) The head of each City tribunal shall report to the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, to the official occupying any successor position, the disposition of each complaint alleging a violation of these Rules that has been received by or referred to the head of the tribunal.

(F) The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain a record of every complaint of a violation of these Rules made under this section and of the disposition of each complaint, which record shall be confidential consistent with applicable law. The Chief Judge of OATH or, as applicable, the official occupying any successor position, shall maintain an index of all City administrative law judges found to have violated these Rules and of the discipline imposed in each such case, which index shall be made available for public inspection and copying.

(G) Notwithstanding the foregoing, with respect to a tribunal in any City agency having an internal investigation division, a complaint alleging that an administrative law judge serving on such a tribunal has violated these Rules shall be made to the head of that agency.

(H) Nothing contained herein shall prohibit the head of a tribunal or other officer responsible for employing or appointing a City administrative law judge from refusing further employment to, terminating the employment of or otherwise disciplining the City administrative law judge, if the head of the tribunal or other officer is otherwise authorized to do so.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may

subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

The final rule that is being promulgated responds to public comment in various respects. The most significant respects in which the final rule responds to public comment are the following:

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(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

48 RCNY 107

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

APPENDIX A RULES OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS OF THE CITY OF NEW YORK*1

§107 Advisory Opinions; Advisory Committee.

(A) Advisory opinions. Advisory opinions with respect to these Rules may be issued jointly by the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, by the official occupying any successor position, after consultation with each other. A request for an advisory opinion may be made by a City administrative law judge, including the supervisor of a City administrative law judge or the head of a City tribunal, or by the head of a City agency. A request may be addressed to the Chief Judge of OATH, or, as applicable, to the official occupying any successor position, who shall provide a copy of it to the Administrative Justice Coordinator in the Office of the Mayor, or, as applicable, to the official occupying any successor position, and who shall maintain a record of all such requests for advisory opinions and of all opinions issued in response thereto. An advisory opinion issued under these Rules shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document. Advisory opinions shall be issued only with respect to proposed future conduct or action by a City administrative law judge. A City administrative law judge whose conduct or action is the subject of an advisory opinion shall not be subject to sanction by virtue of acting or failing to act due to a reasonable reliance on the opinion unless material facts were omitted or misstated in the request. A previously issued opinion may be amended, upon notice to the subject City administrative law judge, but the amendment shall apply only to future conduct or action by the City administrative law judge. Advisory opinions shall be made public with such deletions as may be necessary to prevent disclosure of the identity of the subject City administrative law judge or any other involved party.

(B) Advisory committee. The Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position may jointly appoint an advisory committee

and may consult that committee in the preparation of advisory opinions. Advisory committee members shall be members of the bar especially knowledgeable about matters of ethics, administrative law or the operations of City tribunals. Upon request, the committee shall advise the Administrative Justice Coordinator in the Office of the Mayor and the Chief Judge of OATH or, as applicable, the official occupying any successor position, with respect to any question concerning application of these Rules as to which the committee's advice is sought.

HISTORICAL NOTE

Section added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. [See Appendix A footnote]

FOOTNOTES

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[Footnote 1]: * Appendix A added City Record Jan. 12, 2007 §1, eff. Feb. 13, 2007. Note: Statement of Basis and Purpose in City Record Jan. 12, 2007:

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The purpose of the final rule is to fulfill the Charter mandate by establishing a uniform set of ethical standards applicable to all City administrative law judges. The standards will enhance the professionalism of adjudication in the City, protecting the rights of those who appear before tribunals and yielding a fairer and more effective system of administrative justice.

The final rule of conduct specifically directs City administrative law judges to: (1) uphold the integrity of the tribunal on which they serve; (2) avoid impropriety and the appearance of impropriety in all of their activities; (3) perform their judicial duties impartially and diligently; (4) conduct their extra-judicial activities so as to minimize the risk of conflict with judicial obligations; and (5) refrain from inappropriate political activity. Within each category, the rule identifies conduct that is allowed or prohibited or factors to be considered in determining the permissibility of conduct. The rule provides that violations may constitute misconduct and may subject a City administrative law judge to discipline. The rule also provides for the issuance of advisory opinions. The particularity with which the rule explains ethical constraints on the conduct of City administrative law judges will better enable those who perform or supervise adjudicative functions to determine what conduct is permissible, will facilitate activities such as training and continuing education of administrative justice providers and will better inform the public about what processes can be expected and should be provided in administrative hearings.

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Responsibility.

(3) The final rule does not include a proposed restriction on fiduciary activities by City administrative law judges primarily employed by the City.

(4) The final rule provides that a City administrative law judge shall resign from office and withdraw his or her name from any roster for assignment or employment as a City administrative law judge upon becoming a candidate for elective non-judicial office; it also provides that a City administrative law judge who is a candidate for elective judicial office shall comply with State rules governing candidates for elective judicial office and that a violation of those rules by a City administrative law judge is misconduct that may subject a City administrative law judge to discipline under the final rule.

(5) The final rule provides that a City administrative law judge who engages in partisan political activity should be mindful that such activity not detract from, or reduce public confidence in, the fairness, impartiality or dignity of his or her office or the tribunal he or she serves or be in violation of Chapter 68 of the City Charter or any other applicable law.

(6) The final rule provides that a complaint concerning the head of a tribunal located within an agency may be referred by the Chief Administrative Law Judge of OATH and the Administrative Justice Coordinator to the head of the agency within which the tribunal is located and that a complaint concerning the head of a tribunal not located within an agency may be referred by the Administrative Justice Coordinator to the Mayor or the Mayor's designee.

Rules of the City of New York

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

49 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-01 Scope.

These Rules and Regulations shall govern the procedure by which agency records no longer necessary for the conduct of business or for purposes of audit or litigation may be disposed of. No records shall be disposed of unless permission has been obtained from the Department and the corporation counsel in accordance with the provisions of these Rules and Regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

183 of 198 DOCUMENTS

Rules of the City of New York

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

49 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-02 Definitions.

As used in these Rules and Regulations the following terms shall have the following meanings:

Department. "Department" means the department of records and information ser- vices.

Records. "Records" means any document, book, paper, photograph, sound recording, machine readable material or any other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official city business. Library and museum materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications are not included within the definition of records as used in these Rules and Regulations.

Records disposal. "Records disposal" means:

(1) the removal by a city agency, as provided herein, of records no longer necessary for the conduct of business or for purposes of audit or litigation. Methods of disposal include, but shall not be limited to:

(i) the disposal of records by destruction or donation;

(ii) the transfer of records to the Department;

(iii) the transfer of records to the Department determined to have historical or other sufficient value to warrant continued preservation;

(2) the transfer of records from one city agency to another city agency.

Records disposal schedule. "Records disposal schedule" means any list of records promulgated by the Department for an agency which lists the records maintained by that agency by title and defines the exact length of time for which the records shall be kept.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-03 Interim Records Disposal Schedules.

Pending the establishment of records disposal schedules pursuant to §1-04, all directions for the destruction of records issued by the Board of Estimate in the period of January 1, 1976 through December 31, 1978 which have been filed with the Department shall be deemed to constitute interim records disposal schedules unless the status of the records has changed. Agencies which presently maintain records of a type destroyed pursuant to such directions may request permission to dispose of any such records which have since become eligible for disposal. Eligibility for disposal shall be determined by reference to the schedules used by the Board of Estimate in issuing such directions. Requests to dispose of records pursuant to an interim disposal schedule will be made pursuant to §1-05.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-04 Procedure for Making Requests to Establish a Records Disposal Schedule.

(a) Agency requests for the establishment of a records disposal schedule shall be made to the Department on such forms as may be prescribed by the Department.

(b) Upon receipt of a request for the establishment of a records disposal schedule, the Department shall make a formal survey of records maintained by the agency. Based on the findings for such survey, a records disposal schedule shall be established by the Department and approved by the corporation counsel and the Office of the Comptroller. Each agency shall provide the Department, the corporation counsel and the comptroller with its full cooperation and shall provide any information necessary to evaluate the request. If the Department or the corporation counsel deems it necessary, the agency shall provide access to the records in question and, if requested, shall forward such records to the Department or corporation counsel for examination.

(c) The records disposal schedule for these records shall remain in force until the status of the records contained in the schedule changes.

(d) Upon change in status of records or at any time an agency determines that records not within its records disposal schedule are no longer necessary for the conduct of business or for purposes of audit or litigation, the agency may request the Department to make appropriate amendments to its records disposal schedule.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-05 Procedure for Annual Records Disposal.

Following promulgation of an approved records disposal schedule pursuant to §1-04, the agency will certify to the validity and currency of their schedule annually on forms provided by the Department on a date agreed upon by each city agency and the Department. The agency will also indicate the intention to destroy scheduled records 90 days after issuance of such certification and include a listing of those records, if any, which are to be held beyond the specified periods. The certification will list those retained records by title and date and state the reason for retention.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-06 Responses to Annual Certification.

(a) The Department and the corporation counsel will review the certification to ensure that it is valid. The Department or corporation counsel may disapprove the destruction of any other record on the schedule, but must indicate the title and date of such records and state the reason for retention.

(b) If the Department disapproves the destruction of records, it shall notify the agency and the corporation counsel prior to the expiration of the 90-day period provided in §1-05.

(c) If the corporation counsel disapproves the destruction of records, he shall notify the agency and the Department prior to the expiration of the 90-day period provided in §1-05.

(d) In no case shall any agency proceed with the destruction of records until the agency certification form is returned by both the Department and the corporation counsel indicating both have received and reviewed it. The returned receipted form will constitute authorization for an agency to proceed with their annual disposal of records.

(e) Following notice that disposal of records has been authorized, the agency shall dispose of such records forthwith. Each agency must certify to the Department that the records have been disposed of within 60 days of such notice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 1 DISPOSAL OF RECORDS BY CITY AGENCIES

§1-07 Historical Records.

No request for disposal of records shall be granted if in the judgment of the Department such records should be retained for historical or research purposes. Upon request of the Department an agency in possession of records which are no longer necessary for the conduct of business or for purposes of audit or litigation and which are deemed to be of historical or research value shall transfer such records to the municipal archives for permanent custody.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

49 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-01 Vital Records.

$ 15.00	Search of birth, death or marriage record in one year and one City/Borough for one name and issuance of results, i.e. one certified copy of the record, or a "not found" statement.
$ 2.00	Per additional year to be searched in one City/ Borough for the same name.
$ 2.00	Per additional City/Borough to be searched in one year for the same name.
$ 10.00	Per additional certified copy of birth, death or marriage record.
$ 6.00	Certified copy or transcript of birth, death, or marriage record, requested over-the-counter at 31 Chambers Street, when certificate number is provided.
$ 5.00	Use of microfilm reader machine, per day, or part thereof, for consultation of birth, death or marriage records or indexes.
$ 5.00	Exemplification of a birth, death, or marriage record.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap.

2 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 14, 2009:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The administrative cost of providing vital record copies, photocopies, certain digital products, and exhibition loan services, now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

Rules of the City of New York

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

49 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-02 Digital Services.

$ 40.00 Per high resolution scan, color, of item up to 11" × 14".

$ 2.00 Per low resolution scan of item up to 11" × 14" (this service not available for photographs).

$ 5.00 Additional fee for delivery of scanned items on disk.

$ 30.00 Per copy of disk containing archival material previously digitized (except photographic images).

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section repealed and added City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

191 of 198 DOCUMENTS

Rules of the City of New York

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

49 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-03 Photocopying.

$ .25 Per copy, up to 11" × 14" (self-service).

$ .50 Per copy, 11" × 17" (self service).

$ .25 Per copy, from microfilm (self-service microfilm reader/printer; not available for vital records).

$ .50 Per copy, from microfilm of a "tax" photograph.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

192 of 198 DOCUMENTS

Rules of the City of New York

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

49 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-04 Photographic Reproduction (still photography).

$ 45.00 Per print (b&w or color 8" × 10" or smaller) on resin-coated paper or digital equivalent, except 1939/40 "tax" photographs.

$ 35.00 Per print (b&w 8" × 10" or smaller) on resin-coated paper, 1939/40 "tax" photograph.

$ 80.00 Per print (b&w 8" × 10" or smaller) on fiber paper.

$ 60.00 Per print (b&w or color 11" × 14") on resin-coated paper or digital equivalent, except 1939/40 "tax" photographs.

$ 50.00 Per print (b&w 11" × 14") on resin-coated paper, 1939/40 "tax" photograph.

$110.00 Per print (b&w 11" × 14") on fiber paper.

$120.00 Per print (b&w or color 16" × 20") on resin-coated paper or digital equivalent.

$175.00 Per print (b&w 16" × 20") on fiber paper.

$ 60.00 Per 4" × 5" color transparency ($15.00 surcharge for objects larger than 16" × 20").

$ 35.00 Set-up fee for 35mm color transparency (for the first object).

$ 5.00 Per additional 35mm color transparency.

100% Rush Surcharge (48 hours, or less; not available for all photographic services).

Additional charges for oversize, cropping, or other services and products.

HISTORICAL NOTE

Section amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

Section amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. [See T49 Chap. 2 footnote]

Section amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. [See T49 Chap. 2 footnote]

Section amended City Record Dec. 24, 1992 eff. Jan. 23, 1993.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

Rules of the City of New York

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

49 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-05 Photographic Reproduction.

$ 75.00 Per hour, preservation and access fee to view original tape footage for which no intermediary exists.

$ 75.00 and up For the first ten seconds (or less) tape copy on Betacam SP. Fee includes permission for use and will be determined based on the type of production (commercial, or non-profit), distribution (North America only or world wide), and the type of license (e.g. one-time broadcast, broadcast with home video/DVD, broadcast with all media). Additional charges for theatrical and other exhibition.

$ 20.00 Per additional second tape copy on Betacam SP (commercial use).

$ 15.00 Per additional second tape copy on Betacam SP (non-profit use).

$ 25.00 Per duplicate time-coded viewing copy.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

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Rules of the City of New York

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

49 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-06 Microfilm Reproduction.

$30.00 Per roll, 35mm or 16mm diazo microfilm.

HISTORICAL NOTE

Section renumbered and amended (former §2-05) City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008.

[See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

Rules of the City of New York

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

49 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 2 MUNICIPAL ARCHIVES RESEARCH SERVICE AND COPY FEE SCHEDULE*1

§2-07 Other Fees.

$ 15.00and up	Publication or license fee, per item (except moving images) reproduced. Publication or license fees will range from $15.00 for editorial use in a scholarly publication, up to $75.00, or more, for any use of a reproduction of a still image, document, or other archival item in any type of product or media including post-card, poster, book, magazine, newspaper, newsletter, film, video, television, or web-site, based on the type of proposed use.
$ 1.00	Certification of record other than birth, death or marriage record.
$200.00	Exhibition loan fee, per item.
$ 75.00	Per hour, for conservation services, not including materials.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See T49 §2-01 Note 1]

Section renumbered and amended (former §2-06) City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008.

[See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 25, 2008 §1, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]; Chapter amended City Record Aug. 9, 2005 eff. Sept. 8, 2005. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for those services. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

Digital reproduction is a new service provided by the Municipal Archives. The Division also recognizes its responsibility to provide reproduction from its moving image collection and to license its use. Reproduction and license fees will be increased in an amount depending on the quantity used and the use to which the footage is put, in conformity with the standard practice of museums and other repositories.

Chapter 2 amended City Record June 3, 2003 eff. July 7, 2003 per City Record notice. Note: Statement of Basis and Purpose of Adopted Rule. In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase the fees charged for those services and to begin to collect fees for certain services previously provided without fee.

The fees for vital record services have not been changed since 1990. The cost of providing vital record search and copy services and photographic reproductions now exceeds the revenue collected. The fee increase will recoup only part of the cost of providing the service.

Digital reproductions and conservation services are new services provided by the Municipal Archives. A new fee will be charged for items loaned for exhibition, in conformity with the standard practice of museums and other repositories. Publication and license fees will be increased in an amount depending on the use to which the item is put, again in conformity with the standard practice of museums and other repositories.

196 of 198 DOCUMENTS

Rules of the City of New York

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

49 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-01 Municipal Archives Regulations Governing Use of Archival Material.

The New York City Municipal Archives, a division of the Department of Records and Information Services, is open to all qualified persons subject to the following regulations:

A. ACCESS TO MATERIALS.

(1) Researchers must provide acceptable identification upon request.

(2) All researchers must sign the register daily.

(3) Researchers using collections other than vital records must fill out and sign a registration form (MA-18) indicating name, affiliation, if any, and specifying the subject and purpose of the research.

(4) Archival material may not be removed from the Municipal Archives without written permission from the Director.

(5) Special access restrictions and procedures apply to New York County District Attorney closed case files, and Board of Education "anti-Communist" case files.

B. REFERENCE ROOM RULES.

(1) Researchers may bring only those materials needed for research to the document research area.

(2) Coats, bags, briefcases, and other personal articles are not permitted in the document research area.

(3) Archives staff reserve the right to inspect all research materials, briefcases, bags and other personal articles before a researcher leaves the Reference Room.

(4) Food and beverages are not permitted in the Reference Room.

(5) All notes must be taken with pencil, typewriter, word processor, or tape recorder. Ink pens may not be used.

(6) Researchers may not photograph or scan archival material.

(7) Archival material is fragile. Researchers may not write upon, lean upon, mark or otherwise mishandle material. Researchers should report any damaged material to staff immediately.

(8) Researchers must preserve the existing order of material and notify staff if any material is discovered to be not in order.

C. REPRODUCTION AND PUBLICATION OF MATERIALS.

The Municipal Archives recognizes its responsibility to facilitate access to its collections by permitting the reproduction, reprinting, publishing, or other use of archival material, subject to the following conditions:

(1) The physical condition of an item may prohibit reproduction.

(2) Reproductions are provided for the researcher's personal use. They may not be reduplicated or transferred to another individual or institution.

(3) Researchers may use the self-service photocopy machines available in the Reference Room.

(4) Researchers must ask for staff assistance when copying fragile or oversize material.

(5) Permission to publish, reprint, broadcast, re-duplicate, or make other use of archival material may be granted subject to the conditions indicated in the Publish/Use Contract form (MA-45), and may be subject to licensing or use fees. The Director shall decide when and to what degree these restrictions shall apply.

D. CITATION.

(1) Proper acknowledgment or credit must be given to the Municipal Archives for all material used.

(2) The citation should be written as follows (after identification of the item and title of the collection): NYC Department of Records/Municipal Archives.

(3) The Municipal Archives would appreciate receiving copies of any research results.

Any violation of these rules governing the use of Municipal Archives material may be considered sufficient cause for denial of future access.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

Rules of the City of New York

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

49 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-02 Municipal Archives Guidelines for Archival Use of Board of Education "Anti-Communist" Case Files.

A. The Municipal Archives preserves and makes available for research historical records of the New York City Board of Education ("the Board"). This collection includes several records series (nos. 590, 591, 593, 594, 595, 596 and 597) that pertain to the "anti-Communist" activities of the Board from the 1930s through the 1960s. They contain personal and confidential information relating to teachers and other school personnel investigated and/or questioned by the Board for alleged support of or association with the Communist Party. The individuals who are the subject of these files have a privacy right regarding information of a personal nature contained in them; this includes a privacy right regarding the fact that the subject case file exists.

B. The regulations governing public access to all archival material are set forth in §3-01 of this chapter. In addition to those regulations, public access to the "anti-Communist" case file series is governed by the following additional regulations and/or procedures:

(1) Researchers who request access to a specific file for the purpose of researching the views or activities of the individual who is the subject of that file or of another individual named in that file must obtain permission for such access from the subject individual and from the named individual, as applicable. If the subject or named individual is deceased or unable to give or deny permission, such permission must be obtained from the individual's legal heirs or custodians, as specified in forms MA-101A, MA-101B, and MA-101C.

(2) Researchers engaged in more general research not limited to a particular individual or individuals may access files in the restricted series upon certifying that they will neither record nor use any names or personally identifiable material obtained from such files, form (MA-101D).

(3) When a researcher accesses a file with permission from the individual who is the subject of that file, the Archives will redact the names of other individuals in the file whose permission has not been obtained.

(4) Self-service photocopying is not available for anti-Communist case file documents. All photocopies will be redacted to remove information identifying any individual whose permission has not been obtained.

(5) Published materials and materials created for general distribution, such as newspaper clippings and press releases, are not subject to the restrictions set forth in this section.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

198 of 198 DOCUMENTS

Rules of the City of New York

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

49 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 49 Department of Records and Information Services

CHAPTER 3 MUNICIPAL ARCHIVES GUIDELINES REGARDING ACCESS TO ARCHIVAL MATERIAL*1

§3-03 Municipal Archives Guidelines for Archival Use of District Attorney Records.

A. The Municipal Archives preserves and makes available for research the closed case files of the New York County District Attorney ("DANY"). The case files date back to 1896, and constitute one of the most important series in the Archives' extensive collection of records pertaining to the administration of criminal justice.

In accordance with the duly promulgated record retention schedule for this series, the closed case files are transferred to the Municipal Archives for permanent preservation twenty-five years after the date (year) of indictment.

B. The regulation governing public access to all archival material are set forth in §3-01 of this chapter. In addition to those regulations, public access to District Attorney case files that are less than fifty years old (from the year of indictment) are governed by the following additional regulations and/or procedures:

(1) For requests to examine records in case files that are less than fifty years old (from the year of indictment), the Municipal Archives Director, or an authorized staff member, will submit to DANY the following information: name of researcher and affiliation, if any, subject and purpose of research, case file number(s) and name(s) of defendant(s). The Municipal Archives will submit this information to DANY prior to granting the researcher access to the requested records. DANY will be permitted to examine the material in the requested file(s) and separate any items as to which (a) public disclosure is prohibited by statute or court order (e.g. minutes of Grand Jury proceedings); or (b) disclosure would threaten the life or safety of any person, such as information about confidential informants or undercover law enforcement personnel. The Municipal Archives will not permit access to any items separated by DANY from other items in the file. The DANY will have five business days (from the date of notification that the case file is available) in which to conduct a case file review.

(2) For all case files regardless of age, the Municipal Archives will not permit access to minutes of Grand Jury proceedings or any other records as to which disclosure is prohibited by statute or court order. The Municipal Archives will also consider requests by DANY to maintain the confidentiality of records whose age is greater than 50 years when exceptional circumstances warrant granting such request.

HISTORICAL NOTE

Section added City Record Feb. 25, 2008 §2, eff. Mar. 26, 2008. [See T49 Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Feb. 25, 2008 §3, eff. Mar. 26, 2008. Note: Statement of Basis and Purpose:

In order for the Municipal Archives to continue to provide its search and reproduction services, it is necessary to increase fees charged for some of these services. The cost of providing photographic reproductions (still and moving images) now exceeds the revenue collected. The fee increases will recoup only part of the cost of providing the service.

The Municipal Archives recognizes its responsibility to facilitate access to its collections, including series that may contain confidential information. The rule will enable public access to this material while at the same time protecting the privacy rights of individuals who may be named in such files.

The Department received a communication relating to Chapter 3, paragraph C, (2) Reproductions are provided for the researcher's personal use. They may not be re-duplicated or transferred to another individual or institution. The communication inquired whether this wording could be understood to prohibit a patron from working on behalf of an employer, friend, or other family member, or from providing copies to the employer, etc. This is not the intent of the rule. However, patrons of the Municipal Archives who are working on behalf of others should inform the recipients of their work that reproductions are for personal use only and cannot be further reproduced without permission.

1 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-01 Applicability and Definitions.

(a) These rules shall apply to all applications for street activity permits.

(b) For purposes of this chapter, the following terms shall have the following meanings:

Business improvement district. "Business improvement district" shall mean an entity established pursuant to article nine of the general municipal law.

Block party. "Block party" shall mean a community sponsored street activity requiring the closure of a single block of a street, or a portion thereof, for a single day.

Commercial or promotional events. "Commercial or promotional events" shall mean street activities that promote, advertise or introduce a product, corporation, company or other commercial entity or the goods or services of a corporation, company or other commercial entity to either the general public or to a portion of the general public. Commercial or promotional events do not include charitable or cultural events.

Community sponsor. "Community sponsor" shall mean a community-based, not-for-profit organization, association, corporation or the like that has an indigenous relationship to the specific street or community where the event is proposed.

Large events. "Large events" shall mean street activities that have an extensive impact on the surrounding community and vehicular and/or pedestrian traffic in that they include obstructions or structures such as any temporary

platforms, bleachers, reviewing stands, outdoor bandstands and similar structures that cover an area of 120 square feet or more and over 2 feet in height, or any tent or canopy that is more than 400 gross square feet or will be in place for more than 30 days that requires a Department of Building permit; require substantial coordination between SAPO and City agency staff, including the Police Department, Department of Transportation and the Executive Director of Office of Citywide Event Coordination and Management; or use of Military Island or full closure of a street and/or sidewalk with an emergency vehicle lane or meets all other large event criteria and is held at a pedestrian plaza.

Medium-sized events. "Medium-sized events" shall mean street activities that impact pedestrian and/or vehicular traffic in that they require significant set up on a sidewalk and curb lane, or pedestrian plaza, including parking for event-related vehicles or similar set up; or include an obstruction such as a tent, canopy, stage platform, bleacher, reviewing stand, outdoor bandstand or similar structure that covers an area of 120 square feet or more and over 2 feet in height, or any structure that is more than 400 gross square feet or will be in place for more than 30 days that requires a Department of Building permit; and requires coordination between SAPO and City agency staff, including the Police Department, Department of Transportation and the Executive Director of the Office of Citywide Event Coordination and Management.

Pedestrian island. "Pedestrian island" shall mean any public space abutting or separating a roadway or roadways that can accommodate pedestrians.

Pedestrian plaza. "Pedestrian plaza" shall mean an area designed by the New York City Department of Transportation for use by pedestrians located fully within the bed of a roadway, which may vary in size and shape; may abut a sidewalk; may be at the same level as the roadway or raised above the level the roadway; may be physically separated from the roadway by curbing, bollards or other barrier; may be treated with special markings and materials; and may contain benches, tables or other facilities for pedestrian use.

Pedestrian island or plaza event. "Pedestrian island or plaza event" shall mean street activities that occur on a pedestrian island or plaza and may also include the abutting sidewalk, provided that the event does not have a significant impact on surrounding pedestrian or vehicular traffic.

Small events. "Small events" shall mean street activities that occur for a short period of time with low or minimum impact on pedestrian or vehicular traffic normally encountered at the location; require little coordination between SAPO, the Executive Director of the Office of Citywide Event Coordination and Management and the event sponsor; and where the curb lane of a street is used for parking of a promotional vehicle or a vehicle associated with the event or the sidewalk or pedestrian plaza is used for promotional set up or props no larger than a 10 by 10 foot open-sided canopy and allows five feet of unobstructed passage on the sidewalk or pedestrian plaza and remains open for pedestrian use during the event.

Extra small events. "Extra small events" shall mean street activities that occur for a short period of time without significant impact on pedestrian and vehicular traffic and are not designed to draw the attention of passers by; require little coordination between SAPO, the Director of the Office of Citywide Event Coordination and Management and the event sponsor; and where the curb lane of a street is used only for a generator, short-term parking or passenger drop off and the loading or unloading of a vehicle associated with the event or the sidewalk is used for a red carpet and rope or stanchions, banner and a structure no larger than a 10 by 10 feet and where the activity allows at least five feet of unobstructed passage on the sidewalk is available for pedestrian use during the event.

Street activity. "Street activity" shall mean any activity on a public street, street curb lane, sidewalk or pedestrian island or plaza where the activity will interfere with or obstruct the regular use of the location by pedestrian or vehicular traffic, including but not limited to street fairs, block parties and commercial or promotional activities, but shall not include activities conducted pursuant to a valid film permit, demonstrations or parades.

Street fair or festival. "Street fair or festival" shall mean a community sponsored street activity requiring a

multi-day and/or multi-block street closure.

HISTORICAL NOTE

Section amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2009:

The Office of Citywide Event Coordination and Management (CECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose conditions upon the issuance of any street activity permit that are necessary to protect the interests of the City, the community and the general public.

A fee scale is needed in order to grant street permits for commercial activities based on the costs the City incurs to process the permit application and ensure the safety of the event. Applications will be assessed fees, that correlate to the size of the event. The fee scale was created by analyzing the administrative and manpower costs incurred by City agencies to review, evaluate and approve or deny an application, as well as provide oversight and security for the event. The agencies involved in these various processes include CECM, SAPO, NYPD, FDNY, DOT and DOB.

In response to comments received, the rules have been clarified to indicate the nature of the types of events subject to the fee scale and to expressly exempt charitable and cultural events. In addition, the fee scale has been adjusted for events held at pedestrian plazas and islands on Broadway in the midtown area in order to address the increased administrative, security and operational costs associated with special events in these locations.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-02 Street Activity Permit Office.

The Commissioner of the Community Assistance Unit (hereinafter referred to as "CAU") hereby establishes within CAU a Street Activity Permit Office (hereinafter referred to as "SAPO") and the position of director of the Street Activity Permit Office. The function of SAPO will be to administer the procedures set forth in these rules. The director of SAPO shall, consistent with these rules, have the authority to approve or deny any application for a street activity permit, to revoke any street activity permit, or to impose upon the issuance of any street activity permit any conditions necessary to protect the interests of the City, the community and the general public.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31,

1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

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3 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-03 Processing of Applications by Community Boards.

(a) A street activity permit shall be required to conduct any street activity, including, but not limited to, a street fair, block party, festival, green market or farmers market, religious ceremony, block cleanup, recreation program or other such activity on a public street or sidewalk when such activity may interfere with or obstruct the normal use by pedestrian or vehicular traffic of such street or sidewalk.

(b) Street activity permits for such events shall be issued to a sponsor, which shall take responsibility for the conduct of the event. A sponsor shall be a community-based, not-for-profit organization, association, or the like, which has an indigenous relationship to the specific street or community or both, for which the event is proposed and which demonstrates that it has the support of the community and is willing to take full responsibility for the conduct of the event. Street activity permits for business celebrations or the like may, at the discretion of the Director of SAPO, be issued to individuals or commercial entities. All applications for street activity permits must be completed, endorsed and submitted by the applicant, who shall be a natural person authorized to act on behalf of the sponsor in connection with the application.

(c) All applications for street activity permits shall be submitted on forms prescribed by the director of SAPO. Applications for street activity permits for single block and/or single day events shall be obtained at, and filed with, the office of the Community Board for the community district which encompasses the area or areas in which the proposed street activity is to take place in accordance with the procedures of such board. Notwithstanding the foregoing, if applications for such permits cannot be so obtained, then applications shall be obtained at, and filed with, SAPO. SAPO will forward copies of applications for single block and/or single day events that are filed directly with SAPO to the community board(s) for the community district(s) which encompass(es) the area(s) in which the proposed single block

or single day event is to take place.

All applications for multi-block and/or multi-day street events shall be obtained at the office of the Community Board or SAPO and must be filed directly with SAPO no later than December 31st of the calendar year preceding the calendar year of such event; provided, however, that where an earlier date for filing is required by the procedures of the affected community board, filing at SAPO by such earlier date is required. All applications for street activity permits shall be processed as hereinafter provided.

(d) Upon the filing of an application with the office of the community board (or boards) for the community district (or districts) which encompasses the area or areas in which the proposed street activity is to take place, the community board, in accordance with its procedures, shall recommend the approval or denial of the application, or it may so qualify such recommendation with conditions the community board deems to be in the best interest of the area of the proposed street activity or of the community district. Applications for multi-block and/or multi-day events must be returned by the specific community board to SAPO with comments and recommendations no later than March 1st of the calendar year of such multi-block and/or multi-day event. Community boards shall forward to SAPO single block and/or single day applications no later than sixty days prior to the first day of the proposed street activity, except that applications for street clean-ups shall be received no later than thirty days prior to the first day of the proposed activity. In all cases, as provided in §1-04 of these rules, such applications shall be forwarded with such community board's recommendation for either approval, approval with conditions or denial.

(e) There shall be a processing fee of fifteen dollars in the form of a certified check or money order made payable to the "New York City Department of Finance" which shall accompany each application for a street activity permit, except that no processing fee shall be required for applications for street clean-ups. Such fee shall be non-refundable.

(f) No application for a raindate or other form of make-up date will be accepted on any application for a multi-block and/or multi-day street event.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health,

sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-04 Recommendations by Community Boards.

The community board shall forward its recommendation for approval, approval with conditions or denial of a street activity permit application to SAPO for further processing, and shall notify the applicant in writing of such recommendation. If the community board has recommended approval with conditions or denial of a street activity permit application, it shall also notify the applicant of the applicant's opportunity to comment on such recommendation to SAPO in accordance with §1-05 of these rules.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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5 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-05 Comments on Recommendations of Community Boards.

(a) In the event that the community board recommends approval with conditions or denial of the permit application, an applicant shall have five business days from the receipt of the notification by the community board of its recommendation to file written comments with SAPO. If the board recommends denial and the applicant fails to file comments within the time provided, then the application shall be deemed denied. If the board gives an approval with conditions, failure to file comments by the applicant shall be deemed acceptance of such conditions by the applicant and sponsor.

(b) Within five business days of receipt of comments from an applicant challenging the recommendation of the community board, the director of SAPO, or a designee, shall review the recommendation of the community board and either hold a conference with, or receive solicited written statements from, the interested parties. Such interested parties shall include the community board and the applicant and may also include any other parties the Director deems appropriate. The applicant and the community board shall be notified in writing of the director's determination within a reasonable time following such conference or the receipt of such written statements.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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6 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-06 Processing of Applications by the Street Activity Permit Office.

Upon receipt of an application which has been recommended for approval by a community board or after a review of such recommendation by SAPO has resulted in a determination of preliminary approval, SAPO shall forward for review copies of such application to the Police Department, the Fire Department, the Department of Sanitation and the Department of Transportation. Additional copies may also be sent to other agencies, including, but not limited to, the Department of Health, the Department of Consumer Affairs, the New York City Transit Authority, the Department of Social Services, the Department of Finance, the Department of Investigation, the New York State Department of Taxation and Finance, or any other appropriate agency. SAPO shall consider comments, if any, forwarded by any agencies if such comments are forwarded to SAPO by such agencies within fifteen days of such agencies' receipt of such appli- cations.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

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7 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-07 Approval or Denial of Applications by the Street Activity Permit Office.

(a) The Director of SAPO shall take into consideration any recommendations or comments received from community boards or City or other government agencies in determining whether to approve, approve with conditions, or deny a street activity permit application. At any time during the review of an application for a street activity permit, the Director of SAPO or Commissioner of the CAU may require the submission by the applicant or sponsor of such additional information which he or she deems necessary to evaluate the application or the qualifications of the sponsor or to implement the requirements of these rules.

(b) The director shall have the authority to deny an application, to condition the approval of an application, or to revoke a street activity permit, based on the past or present failure of the applicant or sponsor:

(1) to make payment of the processing fee; or

(2) to make payment to, or reach satisfactory agreement with, the Department of Sanitation regarding a clean-up deposit; or

(3) to present proof that all necessary and proper licenses, permits, insurance or authorizations have been received; or

(4) to make payment to, or reach satisfactory agreement with, SAPO regarding a street activity fee; or

(5) to comply with applicable laws or rules; or

(6) to comply with a condition imposed on a permit issued previously to the applicant or sponsor; or

(7) to provide the Director or Commissioner with any additional information which he or she has determined to be necessary to evaluate the application or the qualifications of the sponsor.

(c) In addition to the provisions of subdivision (b) of this section, the director shall have the authority to deny an application, condition the approval of an application or revoke a street activity permit on any or all of the following grounds:

(1) The Police Department, the Fire Department, the Department of Sanitation, the Department of Transportation, the Department of Health, the Department of Consumer Affairs, the New York City Transit Authority, the Department of Social Services, the Department of Finance, the Department of Investigation, the New York State Department of Taxation and Finance, or any other appropriate agency which was forwarded a copy of a street activity permit application for comment, has notified the director of SAPO of its disapproval and the reasons therefor; or

(2) the proposed activity, when considered in conjunction with other proposed activities, would produce an excessive burden on the community, City services or City personnel; or

(3) the information provided on the application or forms or documentation required to be submitted is false, misleading, incomplete or inaccurate; or

(4) approval of the application is not in the best interest of the community, City or general public for reasons that may include, but are not limited to, lack of good character, honesty, integrity or financial responsibility of the sponsor. If the Director determines that the application shall be denied on the grounds that the sponsor lacks good character, honesty, integrity or financial responsibility, the Director shall notify the applicant that the application has been denied and shall specify the reason for such denial. The applicant and/or sponsor may thereafter respond to the Director's determination and appeal such denial pursuant to the provisions of §1-08 of these rules.

(d) The Director shall have the authority to issue a "Notice of Permit in Process" at the request of the applicant to assist the applicant in obtaining related permits, licenses or authorizations required pursuant to provisions of law.

(e) Any application filed with a community board or SAPO which is similar in all material aspects except for the date, location or time of a street activity proposed in a prior application for the same calendar year which has been denied shall be accompanied by a processing fee of fifteen dollars. The director of SAPO shall have the authority to reduce or waive the required filing period for such applications.

(f) For a period of one (1) year following the effective date of this amendment to these rules, the director shall deny applications for street activity permits for multi-block or multi-day street fairs/festivals not held in the calendar year preceding the effective date of this amendment to these rules, except for multi-block street fairs/festivals that do not include vendors or rides.

(g) As used in this section, the term "sponsor" shall include the sponsoring organization or entity named in the application, all the principals and agents of such sponsoring entity, including the applicant, and any other organization or entity affiliated with such sponsoring entity or controlled by a principal or agent thereof; any person or entity which produces, organizes, or manages the street activity; and any person or entity which provides services relating to the conduct of the street activity to either the sponsor or to any producer, organizer or manager of the street activity.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (b) par (3) amended City Record Feb. 23, 2004 §1, eff. Mar. 24, 2004. [See T50 §1-10 Note 1]

Subd. (f) added City Record Feb. 6, 2004 eff. Mar. 7, 2004. [See Note 1]

Subd. (g) relettered (by Law Department per Charter §1045(b)), former subd. (f), because of addition of subd. (f) above.

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 6, 2004

The Community Assistance Unit (CAU) Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public.

Nearly four hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested that CAU exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. Based on written comments and oral comments received at public hearing, CAU has determined that denial of new permits for additional events should be limited to new events that occupy more than one street block or more than one day, or those that occupy more than one block and include vendors or rides, since multi-day events and multi-block events including vendors and rides disproportionately burden police resources.

In the interests of protecting the City and its inhabitants, these rules require SAPO to deny permits to multi-block, multi-day events not held prior to their effective date.

2. Provisions in City Record Oct. 30, 2007: It is hereby extended, for an additional one-year period, the authority of the director, set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. Statement of Basis and Purpose The Office of Citywide Events Coordination and Management (OCECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public. Nearly three hundred SAPO-permitted street events occur annually within the City. Almost all of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department requested for the calendar year 2008 that SAPO exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date. A Statement of Substantial Need for Earlier Implementation was signed by the Mayor and included with the publication of the notice of preliminary rulemaking for these rules. Accordingly, the moratorium extension will be effective as of the date of publication in the City Record. Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon its final publication in the City

Record, of a rule to extend for an additional one-year period, the authority of the Executive Director of the Office of Citywide Events Coordination and Management (CECM) by way of the Director of Street Activities Permit Office (SAPO), set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. Nearly three hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2008 that CECM exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date.

Executive Director Office of Citywide Events Coordination and Management

Michael Bloomberg, Mayor

3. Statement of Basis and Purpose in City Record Dec. 29, 2008: It is hereby extended, for an additional one-year period, the authority of the director, set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the preceding calendar year. The Office of Citywide Events Coordination and Management (OCECM), Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Nearly three hundred SAPO-permitted street fairs and over 5,000 events occur annually within the City. Almost all of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2009 that SAPO exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date. Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation, immediately upon its final publication in the **City Record,** of a rule to extend for an additional one-year period, the authority of the Executive Director of the Office of Citywide Events Coordination and Management (CECM) by way of the Director of Street Activities Permit Office (SAPO), set forth in §1-07 of Chapter 1 of Title 50 of the Rules of the City of New York, to deny applications for street activity permits for events not held in the proceding calendar year. Nearly three hundred SAPO-permitted street events occur annually within the City. Many of these events involve permits for the use of multiple blocks over several days, the erection of structures, the vending of food, apparel and other goods and the use of amplified sound and the performance of music. Such events require additional police presence and increase overtime expenditure by the City. In order to effectively deploy police resources, the New York City Police Department has requested for the calendar year 2009 that CECM exercise its discretion temporarily to deny permits for additional events that place an excessive burden on police resources and divert uniformed personnel from core crime fighting, public safety and counter terrorism duties. In the interests of protecting the City and its inhabitants, these rules will authorize SAPO to deny permits to events for an additional year if the event was not held prior to the new effective date.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-08 Appeals from Determinations of the Director of the Street Activity Permit Office.

(a) An applicant shall have five business days from receipt of the notification of a denial, of an approval with conditions, or a denial of a waiver of the insurance requirement imposed by section 1-10(e) by the Director of SAPO to file a written appeal with the Commissioner of CAU. If an applicant fails to appeal a denial of a permit or a waiver of the insurance requirement within the time provided, then the application process shall be terminated. If the Director approves the application with conditions and the applicant fails to appeal, the applicant and sponsor shall be deemed to have accepted such conditions.

(b) Following the receipt of a written request by an applicant to appeal the determination of the Director of SAPO, the Commissioner of CAU, or a designee, shall review that determination and may hold an appeal conference with, or receive solicited written statements from, the interested parties. Such interested parties shall include the director of SAPO and the applicant and may also include any other parties the Commissioner of CAU deems appropriate. The applicant shall be notified in writing of the determination of the Commissioner of CAU within a reasonable time following the receipt by the Commissioner of CAU of such request.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (a) amended City Record Feb. 23, 2004 §2, eff. Mar. 24, 2004. [See T50 §1-10 Note 1]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-09 Amendments to Applications for Permits.

(a) Any applicant who proposes to amend the date, location or time or make any other material change on an application that has been filed or a permit that has been granted shall file such proposal with SAPO no later than ten business days prior to first day of the proposed activity. The director of SAPO shall consider the recommendations and comments of the community board and City agencies, if any, prior to his or her approval or denial of the proposed amendment.

(b) If a proposed amendment is approved by SAPO, then SAPO shall indicate such approval by either issuing an amended application or permit or noting the amendment on the application or permit.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

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Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-10 Street Activity Fees.

(a) In addition to the application processing fee, the following street activity fees are hereby imposed upon holders of permits for street activities:

(1) for street activities which occupy one block for one day, no fee shall be charged;

(2) for street activities which occupy one block for more than one day, a fee of thirty-five dollars shall be charged for each day after the first day;

(3) for street activities which occupy more than one block, a fee equal to twenty percent of the total fees paid by the vendors to participate in such events shall be charged, except that such total fees shall not include the fees paid by those organizations which the director of SAPO has determined constitute community-based, not-for-profit organizations.

(b) The Director of SAPO shall have the authority to assess a reasonable street activity fee for a street activity for which a permit has been granted in an instance where either no reasonable fee has been paid by vendors to participate in the street activity or where the street activity has been financed in whole or in substantial part by other than participating vendors. In such instance, the street activity fee shall be imposed pursuant to section 1-12 of this chapter.

(c) An applicant who has received a permit to conduct a street activity shall provide the Director of SAPO with all requested information pertaining to the vendors participating in the activity and the fees paid by such vendors.

(d) The Director of SAPO shall have the authority to require that full or partial payment of the street use fee be made prior to the date of the street activity and to require that any amounts remaining owed to the City be paid within a specified period of time following the date of such activity.

(e)(1) Applicants or sponsors of street activities other than not-for-profit entities that occupy no more than one block for no more than one day without a commercial producer for the activity shall be required to obtain general liability insurance for the street activity in the amount of one million dollars ($1,000,000) per occurrence and an endorsement naming the City of New York as an additional insured on such policy. The applicant or sponsor shall provide proof of such coverage prior to the issuance of the permit.

(2) The director of SAPO shall have the authority to waive the insurance required by subdivision (e) of this section where the applicant or sponsor is able to demonstrate that such insurance cannot be obtained without imposing an unreasonable hardship on the applicant or sponsor. Any request for a waiver of the insurance required by subdivision (e) of this section shall be included by the applicant or sponsor in the application submitted to SAPO uner section 1-03. The burden of demonstrating unreasonable hardship shall be on the applicant or sponsor, and may be demonstrated by a showing that the cost of obtaining insurance for the street activity exceeds twenty-five percent (25%) of the applicant's or sponsor's anticipated revenue from the proposed street activity. If the applicant or sponsor has held the street activity in the preceding three (3) years, the anticipated revenue from the proposed street activity shall be presumed to equal or exceed the average of the revenue obtained by the applicant or sponsor in the preceding three (3) years. If the applicant or sponsor has held the street activity for fewer than three (3) years, the anticipated revenue from the proposed street activity shall be presumed to equal or exceed the average of the revenue obtained by the applicant or sponsor in any preceding years in which the street activity was held. If the applicant or sponsor has not previously held the proposed street activity, the director of SAPO shall take into consideration the applicant's or sponsor's projections of anticipated revenue and the prior revenue of comparable street activities of similar size and duration in determining whether the cost of obtaining insurance exceeds twenty-five percent (25%) of anticipated revenue. In the event that the director denies a waiver of the insurance requirement, the applicant and/or sponsor may thereafter respond to the director's denial and appeal such denial pursuant to the provisions of section 1-08 of these rules.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

Subd. (b) amended City Record May 11, 2009 §2, eff. June 10, 2009. [See T50 §1-01 Note 1]

Subd. (e) added City Record Feb. 23, 2004 §3, eff. Mar. 24, 2004. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 23, 2004

The Community Assistance Unit (CAU) Street Activity Permit Office (SAPO) is charged with administration of the permit system for street activities, block parties and fairs. Under §1-02 of the current rules, the director of SAPO is authorized to impose upon the issuance of any street activity permit conditions necessary to protect the interests of the City, the community and the general public.

Nearly forty-four hundred SAPO-permitted street events occur annually within the City. Nearly four hundred of these events involve permits for the use of multiple blocks over several days, known as street festivals and/or street fairs, which may include the erection of structures, the vending of food, apparel and other goods and the use of

amplified sound and the performance of music. Nearly one thousand of the annual SAPO permitted events are issued for commercial events. In the few past years, a number of persons have been injured during SAPO-permitted street activities, which which resulted in claims against applicants, sponsors and the City of New York.

In the interest of protecting the City and its inhabitants, these rules will authorize SAPO to require that event applicants provide evidence of liability coverage for the event and for the City in order to ensure that those who attend these events are adequately protected in the event of injury. In response to comments received, the rules will not impose an insurance requirement on events that occupy only one block for a single day where the applicant or sponsor is a not-for-profit entity. These events are smaller in scale and therefore pose less of a risk to the public.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

11 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-11 Applications for Street Activity Permits for Street Activities Held On or After the Effective Date of Rules.

Except as otherwise provided in these rules, all applications for street activity permits for street activities held on or after the effective date of these rules and all applications pending at such date, shall be valid only if processed in accordance with the rules provided herein.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. [See T50 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the

authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

12 of 133 DOCUMENTS

Rules of the City of New York

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

50 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 1 APPLICATION, FEES AND CHARGES FOR STREET ACTIVITY PERMITS*1

§1-12 Street Activity Fees for Commercial or Promotional Events.

(a) In addition to the application processing fee set forth in subdivision a of section 1-10 of this chapter, the Director of SAPO shall assess the street activity fees set forth in subdivision c of this section for commercial or promotional events. The fee provided for in this section shall not apply to charitable or other events not encompassed within the definition of commercial or promotional events.

(b) Fees under this section, with the exception of extra small events, shall be assessed on a daily basis. Extra small events shall be assessed on a daily basis for a maximum of $861.

(c) The Director of SAPO shall charge an applicant a fee in accordance with the following schedule, which shall be in addition to any bonding requirement imposed by the Director or the Department of Sanitation under any other section of this chapter or any other amount or fee imposed by any City agency:

Type of Event 2009 2009 for Pedestrian Islands or Plazas on Broadway between 42nd and 47th Streets, Pedestrian Islands or Plazas on Broadway between 33rd and 36th Streets and Military Island

Extra Small Event (use of sidewalk or curb lane only) $220 NA

Extra Small Event (use of sidewalk and curb lane) $550 NA

Small Event $2,600 $8,950

Medium Sized Event $6,500 $20,250

Large Event $38,500 $38,500

(d) Reserved.

(e) This schedule does not apply to the following:

(1) sites or events covered by a license, lease or agreement with a third party, unless otherwise provided by a rule issued by the licensor, leasing or contracting agency;

(2) City agency facilities or departmental or administrative offices;

(3) block parties or street fairs covered by section 10-110(a) of this chapter;

(4) demonstrations or other political activity;

(5) parades; or

(6) events of a business improvement district or a non-profit entity operating a pedestrian island or plaza pursuant to a contract or concession from the City if (i) such entity is the sponsor and permittee for the event; and (ii) the event furthers civic, cultural or charitable purposes or the marketing and promotion of local businesses or a neighborhood within the business improvement district but does not promote a single entity or business within the business improvement district.

HISTORICAL NOTE

Section added City Record May 11, 2009 §3, eff. June 10, 2009. [See T50 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Oct. 22, 1996 eff. Nov. 21, 1996. Note further provisions:

Pursuant to Executive Order No. 59 (dated December 9, 1993) and Executive Order No. 14 (dated July 31, 1990), the Community Assistance Unit, acting through its Street Activity Permit Office, is delegated the authority to exercise all functions, powers and duties regarding the issuance of street activity permits and assessment of fees for street festivals, parties, celebrations fairs, and other events taking place on city streets and sidewalks.

The number of events taking place on the streets of the City has been increasing at a rapid rate. These events impact on neighborhood businesses and the quality of life of its residents by attracting large numbers of people and disrupting the flow of traffic. The City expends substantial resources to provide police, health, sanitation, traffic control and other regulatory services for such events.

Increasing the notice requirement for multi-day and multi-block events will enable the City to gauge the overall traffic impact and resource requirements of multiple events planned for the same day and/or same area, and provide sufficient time for rescheduling events if conflicts occur.

Amendments are also proposed to require the payment of the street activity processing fee by certified check or money order, to extend the prohibition of raindates to all multi-day and multi-block events and to establish additional requirements to be met by sponsors before the permits may be issued.

Rules of the City of New York

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

50 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-01 Sale of Alcoholic Beverages Prohibited.

No sponsor who has received a permit to conduct a street activity from the Street Activity Permit Office (SAPO) shall sell or otherwise distribute alcoholic beverages to any person during the course of such street activity, nor shall such sponsor allow any vendor or any other person or entity that participates in such street activity to sell or otherwise distribute alcoholic beverages to any person during the course of such street activity.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic

beverages can create disorder and disruptive behavior at street events which are dangerous to the participants and organizers of the event.

Rules of the City of New York

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

50 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-02 Enforcement.

The director of SAPO shall have the authority to deny an application for a street activity permit, to condition the approval of an application for a street activity permit, or to revoke a street activity permit, based on the past or present failure of the applicant or sponsor to comply with the provisions of this chapter.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic beverages can create disorder and disruptive behavior at street events which are dangerous to the participants

and organizers of the event.

Rules of the City of New York

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

50 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 50 Community Assistance Unit

CHAPTER 2 SALE OF ALCOHOLIC BEVERAGES AT EVENTS AUTHORIZED BY A STREET ACTIVITY PERMIT*1

§2-03 Exception.

This prohibition shall not apply to entities or persons licensed by the New York state liquor authority to sell alcoholic beverages at retail to be consumed on the premises where sold, including those licensees who operate a sidewalk cafe pursuant to a license issued by the commissioner of consumer affairs.

HISTORICAL NOTE

Section added City Record May 1, 2001 eff. May 1, 2001. [See T50 Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 1, 2001 eff. May 1, 2001, note further provisions:

This rule is being adopted to ensure that all street events are conducted in an orderly manner and without interference with the rights of both the participants in street activities and the businesses and residents who operate or reside in the areas near or adjacent to the permitted street activities. The effect of the sale of alcoholic beverages can create disorder and disruptive behavior at street events which are dangerous to the participants

and organizers of the event.

16 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-01 Advisory Opinions on Questions Relating to Lobbying.

(a) The City Clerk will issue advisory opinions on questions relating to lobbying on a case-by-case basis in response to written requests from persons subject to the jurisdiction of the City Clerk, or who reasonably believe they may be subject to such juris- diction.

(b) Such written requests shall set forth in a clear and concise manner the question raised and shall set forth a statement of the actual facts prompting such inquiry.

(c) The City Clerk will not issue an advisory opinion based upon a hypothetical set of facts. Inquiries may be directed to:

Lobbyist Registrations

Office of the City Clerk

Municipal Building

Room 265

New York, New York 10007

HISTORICAL NOTE

Section in original publication July 1, 1991.

17 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-02 Fees for Lobbyist Registration.

Each statement of registration required to be filed pursuant to Administrative Code §3-213, shall be accompanied by a fee of $150 for the first client registered and a fee of $50 for each additional client registered.

HISTORICAL NOTE

Section amended City Record Dec. 8, 2006 §1, eff. Dec. 10, 2006 per City Record notice. [See

Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 8, 2006:

The rules and rule amendments promulgated herein implement the provisions of Local Law 15 of 2006, which amends the City's Lobbying Law with regard to public access to information filed by lobbyists with the City Clerk and penalties for failure to comply with the law's requirements. These changes to the Rules increase existing penalties and impose new penalties on lobbyists and clients, amend the filing dates for lobbyists' filings and provide procedures to govern complaints against lobbyists and clients.

Specifically, the fines for the following violations of the Lobbying Law are being increased: failure to file,

violation of a cease-and-desist order of the City Clerk or violation against the prohibition against contingency agreements and any violation of the Lobbying Law the penalty for which is not specifically addressed in the Lobbying Law. In addition, new fines for late filings are being imposed. Certain procedures for filing complaints and commencing formal proceedings are also outlined. The Rules are also being updated to reflect certain previously enacted fee increases. In light of the change in law to permit electronic filing and the general trend to a paperless filing, new rules governing public viewing of lobbyist data are being implemented. The Rules regarding complaints are intended to implement the new auditing and investigative powers mandated by Local Law 15 of 2006. The final rule changes the proposed rule in three ways. First, the final rule clarifies that all reports and registrations filed for calendar year 2006 and prior years will be kept for five years in the City Clerk's Office. In contrast, reports and registrations filed for calendar year 2007 and later will be kept in electronic form in the City Clerk's Office and will be posted on the internet as soon as practicable. Second, the final rule indicates that the bi-monthly reporting periods will commence on January 1, 2008, rather than on January 1, 2007. Third, the final rule adds a definition of the term 'unemancipated child'.

Statement of Substantial Need For Earlier Implementation of Rule

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation immediately upon its final publication in the City Record, of the rule amending chapter 1 of Title 51 of the Rules of the City of New York in relation to administration and enforcement of the Lobbying Law. This rule implements amendments to the Lobbying Law made by Local Law 15 of 2006.

The earlier implementation of such rule is necessary because certain provisions of Local Law 15 of 2006 take effect on December 10, 2006. Local Law 15 provided that relevant city agencies take all steps, including the promulgation of rules, to ensure its implementation on its effective date. The proposed rule was published in the City Record on October 11, 2006 and a public hearing was held on November 15, 2006. Implementing the rule upon publication is necessary to ensure that the law's amendments can take effect in a timely manner.

Michael Bloomberg

Mayor, City of New York

Victor L. Robles City Clerk, City of New York Clerk of the Council

Rules of the City of New York

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

51 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-03 Enforcement of the Lobbying Law.

(a) **Violation of the Lobbying Law.** (1) **General.** Any lobbyist or client who violates any provision of the Lobbying Law or these Rules, shall be subject to the penalties available under §3-223 of the Lobbying Law and subdivision b of this section.

(2) **Examples of violations.** Lobbyists and, where applicable, clients are subject to penalty for violations of the Lobbying Law that include, but are not limited to, the following:

(i) Failure of a lobbyist to register, or failure of a lobbyist to register a client;

(ii) failure to submit any required disclosure report (Registration, Periodic Report, Lobbyist Annual Report, Client Annual Report, Fundraising Report, Political Consulting Report);

(iii) late filing of any registration or report;

(iv) failure to complete any section or portion of a report;

(v) failure to supply correct information in any report;

(vi) failure to pay any required fee;

(vii) failure to pay a penalty in a stated period of time may result in payment of an additional penalty if the initial penalty so provides.

(3) **Extensions.** A lobbyist or client requesting an extension in the filing of lobbyist or client reports should request such an extension prior to the filing deadline.

(i) Extensions are a courtesy and will be granted only for good cause and within the discretion of the City Clerk;

(ii) a request for an extension shall be in writing;

(iii) an extension should be requested no later than two business days before the date of deadline;

(4) **Incomplete and incorrect reports.** Where a lobbyist or client submits any report or registration that is incorrect or incomplete, the City Clerk may take the following action: The lobbyist or client shall be notified by certified mail of any incorrect or incomplete report, which may be returned to the lobbyist or client at the discretion of the City Clerk.

The lobbyist or client shall have 14 business days from the date of mailing of the notification to cure said defective report. Failure to cure within 14 business days shall result in the lobbyist or client being deemed in default as to the submission of said report.

(5) **Notification and opportunity to cure.** Pursuant to the Administrative Code, §§3-223 (c), (d) and (e), where a lobbyist or client fails to comply with any section of the Lobbying Law, the City Clerk shall, by certified mail, notify them of the nature of their noncompliance and notify them that compliance must be made within 14 business days of mailing of such notice.

(6) **Recipient of notification.** The Principal Officer or other person duly designated by a lobbyist on the registration form shall be deemed an appropriate recipient of any mailed notice of communication from the City Clerk pursuant to the Lobbying Law. A lobbyist's registration form shall also identify the Principal Officer of the client or other person duly designated by a client to receive any mailed notice of communication from the City Clerk pursuant to the Lobbying Law and such Principal Officer or person shall be deemed an appropriate recipient of any such notice.

(b) **Penalties.** (1) **Penalties available under the Lobbying Law.** A person or organization who violates the Lobbying Law is subject to the penalties available under subdivisions (a), (b), (c), and (d) of §3-223 of the Administrative Code.

(i) Pursuant to Administrative Code §3-223(a), except as provided in §3-223(b), any person or organization who knowingly or willfully violates any provision of the Lobbying Law shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the City Clerk, or an order to cease all lobbying activities subject to the jurisdiction of the City Clerk for a period of time as determined by said Clerk not to exceed sixty days, or both such civil penalty and order;

(ii) Pursuant to Administrative Code §3-223(b), any person or organization who violates a cease and desist order of the City Clerk issued under subdivision (a) of this section or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in Administrative Code §3-218, shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the City Clerk;

(iii) Pursuant to Administrative Code §3-223(c), following a failure to make and file any statement or report required by the Lobbying Law, the City Clerk shall notify the person or organization of such fact by certified mail that such filing must be made within fourteen business days of the date of mailing of such notice. The failure to file any statement or report within such time shall constitute a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the City Clerk;

(iv) In addition to any other penalties prescribed in the Lobbying Law and these Rules, any lobbyist or client who fails to file in a timely manner any statement or report required by the Lobbying Law or these Rules, shall be subject to late filing penalties as follows:

(A) Any person or organization who has never previously filed a statement or registration or any other filing required pursuant to the Lobbying Law and these Rules and is filing for the first time shall be charged a late filing fee of $10 per day for each day the required filing is late. If more than one filing is due the total late filing fee shall be equal to the sum of $10 per day multiplied by the number of such late filings.

(B) Any other person or organization shall be charged a late filing fee of $25 per day for each day the required filing is late. If more than one filing is due the total late filing fee shall be equal to the sum of $25 per day multiplied by the number of such late filings.

(C) Such late filing shall be treated as an incorrect or incomplete report pursuant to §1-03(a)(4) of these Rules.

(D) For the purposes of the imposition of a late filing fee, all filings must be received by the due date for such filing. If such due date falls on a Saturday, Sunday or city holiday, the filing must be received by the next city business day.

(v) Pursuant to Administrative Code §3-223(d), any person or organization who violates any provision of the Lobbying Law not punishable by subdivisions (a), (b), or (c) of §3-223 shall be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the City Clerk.

(2) **Guidelines for penalties.** Penalties may reflect the frequency and extent of a lobbyist's or client's record of violations. Mitigating or aggravating factors may be considered. Penalties shall be assessed by the City Clerk after a hearing on a case-by-case basis.

(c) **The Hearing.** (1) Pursuant to the Administrative Code §3-223(f), only after a hearing shall the City Clerk assess the amount of a civil penalty or duration of an order to cease and desist.

(2) **Designation of OATH.** Pursuant to Charter §1048(a), City Clerk designates the Office of Administrative Trials and Hearings (OATH) to conduct on its behalf all hearings involving violations of the Lobbying Law.

(3) **The hearing officer.** The hearing shall be conducted by an Administrative Law Judge (ALJ) employed by OATH for that purpose. The ALJ shall have all the powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law.

(4) The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted.

(5) All testimony shall be given under oath or affirmation administered by the ALJ.

(6) The person or organization charged shall be entitled to be represented, to have witnesses give testimony and to otherwise present relevant and material evidence on behalf of such person or organization, to cross examine witnesses and to examine any document or other item offered into evidence.

(7) A typed or recorded copy of the record of the hearing shall be prepared by OATH; a copy shall be provided upon request for a reasonable cost.

(8) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of either party or upon the ALJ's own motion and with notice to the parties.

(9) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these Rules.

(10) After the conclusion of the hearing, the presiding ALJ shall prepare a report and recommendation.

(11) The report of an ALJ shall summarize the evidence presented and contain an analysis of the legal and factual issues, with recommended findings of fact and recommended disposition.

(12) The report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(13) A copy of the report shall also be delivered or mailed to the person or organization charged.

(d) **Decision after the hearing.** (1) The hearing decision shall be made and issued by the City Clerk and shall be based exclusively on the record and transcript of the hearing. In reaching a decision, the City Clerk may review the memoranda of law of the parties, if any. The City Clerk shall not be bound by the ALJ's recommendation, in whole or in part, as may be appropriate. The decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action.

(2) A copy of such decision shall be mailed by the City Clerk to the person or organization charged and the attorney or representative of such person or organization, if any.

(3) In the event that a decision is adverse to the person or organization charged, in whole or in part, the person or organization has the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Dec. 8, 2006 §2, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (a) par (2) subpar (ii) amended City Record Dec. 8, 2006 §3, eff. Dec. 10, 2006 per City Record

notice. [See T51 §1-02 Note 1]

Subd. (a) par (6) amended City Record Dec. 8, 2006 §4, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (b) par (1) amended City Record Dec. 8, 2006 §5, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

Subd. (b) par (2) amended City Record Dec. 8, 2006 §6, eff. Dec. 10, 2006 per City Record notice.

[See T51 §1-02 Note 1]

CASE NOTES

¶ 1. Unlike civil penalty, late fees are automatic and begin to accrue once lobbyist or client misses filing deadline. Late fees of $420 assessed against client of lobbyist who filed annual report 42 days after the filing deadline. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

¶ 2. Absent proof (not presented here) that client had previously registered or made a filing required by the Lobbying Law, client could not be assessed late fees at the enhanced rate of $25 per day but instead would be assessed late fees at the rate applicable to first time filers of $10 per day under this section. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

¶ 3. Late fees are automatic and start accumulating once a client misses a filing deadline. Since petitioner proved lobbyist's client had previously filed an annual report, client was assessed late fees at the enhanced rate of $25 per day under this section. Late fees of $6350 assessed where client filed its report 254 days late. **Office of the City Clerk v. Allied Waste Industries**, OATH Index No. 503/08 (Oct. 29, 2007).

19 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-04 Lobbyist Registration Unit-Requests to View Documents.

All reports and registrations filed pursuant to the Lobbying Law for calendar year 2006 and before shall be kept for five years in the Office of the City Clerk and shall be open to public inspection. All reports and registrations filed pursuant to the Lobbying Law for calendar year 2007 and thereafter shall be kept in electronic form in the Office of the City Clerk, shall be available for public inspection and shall be posted on the internet as soon as practicable. Such inspection is subject to the following regulations:

(a) Requests to view reports or registrations will be accepted by the Office of the City Clerk, 1 Centre Street-Room 265, New York, New York, or any subsequent address, during regular business hours. Requests that cannot be fulfilled on the day of request may be held over until the following business day;

(b) All properly submitted, valid requests will be honored in as timely a manner as the scope of the request and the availability of staff and equipment will allow;

(c) Members of the public may purchase copies of reports and registrations upon the payment of a sum equal to 25 cents per page.

HISTORICAL NOTE

Section amended City Record Dec. 8, 2006 §7, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

Section in original publication July 1, 1991.

20 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-05 Lobbyist Reporting Periods.

(a) Pursuant to Administrative Code §3-216(a)(1), commencing on January 1, 2008 the six bi-monthly reporting periods are:

January 1 through the last day of February-due by March 15th;

March 1 through April 30-due by May 15th;

May 1 through June 30-due by July 15th;

July 1 through August 31-due by September 15th;

September 1 through October 31-due by November 15th;

November 1 through December 31-due by January 15th.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §8, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

Rules of the City of New York

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

51 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-06 Complaints, Commencement of Formal Proceedings and Pleadings.

(a) **Notice.** If the City Clerk makes an initial determination, based on a complaint, investigation, or other information available to the City Clerk, that there is probable cause to believe that a lobbyist or client has violated a provision of the Lobbying Law or these Rules, the City Clerk shall notify the lobbyist or client of its determination in a written notice. The notice shall contain a statement of the facts upon which the City Clerk relied for its determination of probable cause and a statement of the provisions of the Lobbying Law or these Rules allegedly violated. The notice shall afford the lobbyist or client an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the lobbyist or client of his or her right to be represented by counsel or any other person.

(b) **Lobbyist's and client's duty to cooperate; City Clerk's duty to report to Department of Investigation.** (1) Where the City Clerk conducts an investigation, the lobbyist or client shall cooperate with the representatives of the City Clerk. In any case where the City Clerk refers a complaint and/or other information available to the City Clerk to the Department of Investigation, the lobbyist or client shall cooperate with representatives of the Department of Investigation.

(2) If the City Clerk determines, on the basis of a complaint, investigation, or other information available to the City Clerk, that a willful violation of the Lobbying Law has been or may have been committed, then the City Clerk shall expeditiously report such determination, and any information relating thereto, to the Department of Investigation.

(3) Where the City Clerk receives a report that a criminal violation of law, including but not limited to a violation of Chapter 68 of the New York City Charter, and excluding a violation of the Lobbying Law, has been or may have

been committed, the City Clerk shall report any information relating thereto to the Department of Investigation within five days of receipt thereof.

(4) Where the City Clerk suspects, on the basis of a complaint, investigation, or other information available to the City Clerk, that a criminal violation of law, including but not limited to a violation of Chapter 68 of the New York City Charter, and excluding a violation of the Lobbying Law, has been or may have been committed, the City Clerk shall expeditiously report such suspected violation, and any information relating thereto, to the Department of Investigation.

(c) **Request for a Stay.** In response to the City Clerk's notice, the lobbyist or client may apply to the City Clerk for a stay of the proceedings, for good cause shown. The City Clerk may grant or deny such request in its sole discretion.

(d) **Admission of Facts.** If, in response to the City Clerk's notice, the lobbyist or client admits to the facts contained therein or to a violation of the provisions of the Lobbying Law or these Rules and elects to forgo a hearing, the City Clerk may, notwithstanding §1-03(c)(1) of these Rules, issue an order finding a violation and imposing the penalties it deems appropriate under the Lobbying Law or these Rules.

(e) **No Probable Cause Finding.** If, after receipt of the lobbyist's or client's response, the City Clerk determines that there is no probable cause to believe that a violation has occurred, the City Clerk shall dismiss the matter and inform the lobbyist or client and the complainant, if any, in writing of its decision.

(f) **Determination of Probable Cause.** If, after consideration of the lobbyist's or client's response, the City Clerk determines that there remains probable cause to believe that a violation of the provisions of the Lobbying Law or these Rules has occurred, and the lobbyist or client has not elected to forgo the hearing, the City Clerk shall direct a hearing to be held in accordance with the procedures set forth in §1-03(c) of these Rules.

(g) **Petition.** The City Clerk shall institute formal proceedings by serving a petition on the lobbyist or client. A copy of the petition shall also be sent to OATH at the time the lobbyist or client is served with the petition. The petition shall set forth the facts which, if proved, would constitute a violation of Lobbying Law or these Rules, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the lobbyist or client of the lobbyist's or client's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(h) **Answer.** (1) **General Rule.** The lobbyist or client shall answer the petition by serving an answer on the City Clerk within eight days after service of the petition, unless a different time is fixed by the City Clerk. A copy of the answer shall also be sent to OATH at the time the City Clerk is served with the answer. The lobbyist or client shall serve the answer personally or by certified or registered mail, return receipt requested. Upon written request of the lobbyist or client stating the specific reason for such request, submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for the lobbyist or client to submit the same.

(2) **Form and Contents of Answer.** The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The lobbyist or client may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the lobbyist or client. If the lobbyist or client is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the lobbyist or client or by his or her representative.

(3) **Effect of Failure to Answer.** If the lobbyist or client fails to serve an answer, all allegations of the petition shall be deemed admitted and OATH shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Administrative Law Judge conducting the hearing may issue an order. If the lobbyist or client fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(i) **Amendment of Pleadings.** Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Administrative Law Judge conducting the hearing.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §9, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

CASE NOTES

¶ 1. Although subsection (h) of this section provides that the failure to answer the petition is deemed an admission of all of the allegations in the petition, petitioner must still submit proof establishing the factual basis for the determination it seeks. Client's failure to file an answer to the petition did not establish, by itself, that the client was not a first time filer and therefore petitioner was not entitled to the enhanced late fee rate of $25 per day. **Office of the City Clerk v. Bayrock Group, LLC,** OATH Index No. 432/08 (Oct. 22, 2007).

Rules of the City of New York

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

51 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-07 Certification.

The certification of statements and reports required by Administrative Code §3-222 must be performed by a Principal Officer.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §10, eff. Dec. 10, 2006 per City Record notice. [See T51 §1-02 Note 1]

23 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 1 LOBBYING

§1-08 Definitions.

"Lobbying Law" shall mean subchapter 2 of chapter 2 of title 3 of the Administrative Code of the City of New York.

"Rules" shall mean chapter 1 of title 51 of the Rules of the City of New York.

"Principal Officer" shall mean the chief administrative officer (the person who has the legal capacity to enter into a contract on behalf of the organization) of the lobbyist or client if either is an organization or the lobbyist or client if either is a person.

"Unemancipated child" shall mean any son, daughter, stepson, or stepdaughter who is under age eighteen at the time of reporting, unmarried, and living in the household of the reporting individual.

HISTORICAL NOTE

Section added City Record Dec. 8, 2006 §11, eff. Dec. 10, 2006 per City Record notice. [See T51

§1-02 Note 1]

24 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-01 Qualifications.

To become a Commissioner of Deeds, an individual:

(a) must be a citizen of the United States of America;

(b) must be a resident of the City of New York, or be an attorney who maintains a law office within the City of New York (such attorneys are deemed residents of the City by NYS Executive Law §§140(5) and (5-a) for the purpose of becoming a Commissioner of Deeds);

(c) must be at least 18 years of age;

(d) must not have been removed from the Office of Notary Public or Commissioner of Deeds;

(e) must be an attorney, an attorney's employee, someone serving a clerkship in a law office, or someone who has qualified for a Certificate of Fitness from the Office of the City Clerk. After the oath or affirmation is administered, the Commissioner of Deeds should place the appropriate one of the following statements (called a "jurat") after the person's signature: "Sworn to before me this _____ day of _____, 19 ____." The jurat must be followed by the signature and other information of the Commissioner of Deeds as described above.

(1) **Acknowledgements.** For the purpose of a Commissioner of Deeds, an acknowledgement is a declaration by a person that he is in fact the person who is described in a particular document and that he has executed (signed) that particular document. There is no particular form that must be used in taking an acknowledgement. For an

acknowledgement to be valid, the Commissioner of Deeds must ask the person making the acknowledgement:

(i) to identify himself to the satisfaction of the commissioner of deeds;

(ii) whether he is the person described in the document; and

(iii) whether it is in fact his signature on the document.

(It is not essential for the person to sign the document in the presence of the Commissioner of Deeds.)

After taking an acknowledgement, the Commissioner of Deeds must place a statement on the document or attach a statement to the document as evidence of her taking the acknowledgment. Whatever form used, the statement must recite all the matters that were required to be done, known or proved on the taking of the acknowledgement, together with the name and substance of the declaration of the person making the acknowledgement. An acceptable form of such a statement is: "On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same." This must be followed by the Commissioner's signature and other information as described above.

HISTORICAL NOTE

Section in original publication July 1, 1991.

25 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-02 Certificates of Fitness-Qualifications.

To qualify for a Certificate of Fitness from the Office of the City Clerk, an applicant for the office of Commissioner of Deeds:

(a) must not have any outstanding tax bills or any unpaid traffic tickets; and

(b) must not have been convicted of:

(1) any felony; or

(2) illegally using, carrying or possessing a pistol or other dangerous weapon; or

(3) making or possessing burglar's tools; or

(4) buying or receiving or criminally possessing stolen property; or

(5) unlawful entry of a building; or

(6) aiding escape from prison; or

(7) unlawfully possessing or distributing habit-forming narcotic drugs; or

(8) practicing or appearing as attorney-at-law without being admitted and registered (Judiciary Law §478; former

Penal Law §270); or

(9) soliciting legal business on behalf of an attorney (Jud. Law §479; former Penal Law §270-a); or

(10) entering a hospital to negotiate a settlement or obtain a release statement from a patient (Jud. §480; former Penal Law §270-b); or

(11) being an employee or another attached to a hospital, police department, prison, court, or bail bond institution, who assisted or abetted the solicitation of persons or the procurement of a retainer for or on behalf of an attorney (Jud. Law §481; former Penal Law §270-c); or

(12) unlawfully practicing law (Jud. Law §484; former Penal Law §271); or

(13) purchasing claims for the purpose of commencing a lawsuit (Jud. Law §489; former Penal Law §275); or

(14) as an attorney, sharing legal fees with a non-attorney (Jud. Law §491; former Penal Law §271); or

(15) "jostling," i.e., taking certain actions designed to aid or commit pickpocketing (Penal Law §165.30; former Penal Law §722); or

(16) fraudulent accosting (Penal Law §165.30; former Penal Law §722); or

(17) aggravated harassment in the second degree via electronic, print, or other medium (Penal Law §240.30(1); former Penal Law §722); or

(18) loitering for the purpose of engaging another in deviate sexual intercourse or other deviate sexual behavior (Penal Law §240.35(3); former Penal Law §722); or

(19) violation of §§550; 551, or 551-a of the former Penal Law; or

(20) vagrancy or prostitution.

(c) must, if applying on or after January 1, 1990, have earned a grade of at least 65 percent on a written examination to be administered by the Office of the City Clerk in accordance with §2-03 of these Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-03 Certificates of Fitness-Application and Examination.

(a) Commencing January 1, 1990, the City Clerk will not issue a Certificate of Fitness to any applicant for the Office of Commissioner of Deeds until and unless the applicant has earned a grade of at least 65 percent on a written examination administered by the Office of the City Clerk.

(b) Applicants shall take the examination prior to submitting their application and fees. An application shall not be considered complete unless the applicant has earned a grade of at least 65 percent on the written examination prior to the submission of the application form.

(c) The written examination shall be administered by the Office of the City Clerk in accordance with a schedule and in such places as shall be set and announced from time to time by the City Clerk.

(d) The written examination shall be of a format type as shall be set and announced by the City Clerk from time to time. Examples of formats include, but are not limited to, short answer, essay question, multiple choice, true/false, or any combination thereof; open book; or closed book.

(e) The examination shall be based solely on information contained in the City Clerk's rules for the Office of Commissioner of Deeds.

(f) All earned grades shall be final. Applicants who do not earn a passing grade shall be free to try again to earn a passing grade at any and all future, regular test administrations by the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-04 Applications.

(a) Obtain and complete the appropriate application form as per the instructions.

(b) Have the application notarized.

(c) Applicants serving clerkships in the offices of attorneys, and whose clerkship certificates are on file with the proper officials, shall submit an affidavit to that effect. (First-time applicants only.)

(d) Other employees of attorneys shall submit an affidavit, sworn to by a member of the law firm, stating that the applicant is a proper and competent person to perform the duties of a Commissioner of Deeds. (First-time applicants only.)

(e) Submit a certified check or money order for the appropriate amount. Upon being notified of appointment, the applicant must appear in person at the Office of the City Clerk and take an oath of office. In so doing, the applicant must swear or affirm that: he is a citizen of the United States, and a resident of the State of New York, the City of New York and the county of (name of the county); that he will support the constitutions of the State of New York and of the United States, and that he will faithfully discharge the duties of the Office of Commissioner of Deeds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-05 Term of Office.

The term of office for a Commissioner of Deeds is two years, commencing from the date of appointment.

(a) For individuals who are residents of the City of New York: Any Commissioner of Deeds who ceases to be a resident of New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to be a resident of New York City he or she must immediately notify the Office of the City Clerk.

(b) For attorneys who are deemed "residents" of the City of New York by virtue of having law offices within City: Any Commissioner of Deeds who ceases to maintain a law office within New York City automatically gives up his or her office of Commissioner of Deeds. When any Commissioner of Deeds ceases to maintain a law office within New York City he or she must immediately notify the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-06 Procedures for Exercising the Powers of a Commissioner of Deeds.

(a) **Required information.** On each document sworn to, acknowledged, or proved before him, a Commissioner of Deeds must affix, in black ink,

(1) his signature;

(2) his printed, typewritten, or stamped name;

(3) his office title;

(4) his official number; and

(5) the date when his term expires.

An example of the form to be followed is:

(signature)

Jane Sample

Commissioner of Deeds, New York City

123456789

Term Expires: (date)

A Commissioner of Deeds must sign the name under which she was appointed; she may use no other. When a Commissioner of Deeds marries during the term of office, the Commissioner must continue to use any pre-marriage surname when signing as a Commissioner of Deeds. However, if the Commissioner wishes to include a new, marriage surname, the Commissioner must use the pre-marriage surname in the Commissioner's signature and printed name, and then add the marriage surname in parentheses after the signature. When the term of office expires, the Commissioner's renewal application may be made either under the pre-marriage or the marriage surname. When the renewal is granted the Commissioner must perform all functions solely under the name used on the renewal application.

A Commissioner of Deeds must immediately notify the Office of the City Clerk concerning any changes of address.

It is optional to have an official stamp or seal.

A Commissioner of Deeds appointed in the City of New York may administer oaths and take acknowledgements or proofs of deeds and other documents in any part of the City of New York.

(b) **Administering oaths and taking acknowledgement or proofs.**

(1) Oaths. For the purpose of a Commissioner of Deeds, an oath is a person's verbal pledge that her statements contained in a document are true. An affirmation is the equivalent of an oath and may be administered to anyone who objects to taking an oath as a matter of principle. Oaths and affirmations must be administered in legally acceptable forms. An acceptable form for administering an oath is: "Do you solemnly swear that the contents of the statement made and subscribed by you are true and correct?" An acceptable form for administering an affirmation is: "Do you solemnly, sincerely, and truly, declare and affirm that the statements made and subscribed by you are true and correct?" When an oath or affirmation is administered, the person swearing or affirming must express assent to the oath or affirmation by the words "I do" or words of like meaning. For an oath or affirmation to be valid, whatever form is used, it is necessary that:

(i) the person swearing or affirming be personally present before the Commissioner of Deeds;

(ii) the person unequivocally swears or affirms that what she states is true;

(iii) the person swears or affirms as of that moment; and

(iv) the person consciously and conscientiously takes upon herself the obligation of an oath or affirmation.

(2) **Proofs.**

(i) A proof is used in place of an acknowledgement on certain instruments. A proof is a formal declaration by a person who witnessed the signing of an instrument and who himself signed as a subscribing witness, which declaration sets forth:

(A) the witness' place of residence;

(B) that the witness knew the individual who is described in and who executed (signed) the instrument; and

(C) that the witness actually saw the individual sign the instrument.

(ii) As with acknowledgements, there is no prescribed form for taking a proof. For a proof to be valid, the commissioner of deeds must be satisfied that:

(A) the witness is who she claims to be;

(B) the witness is stating her correct place of residence;

(C) the witness does in fact personally know the individual who executed the instrument; and

(D) the witness actually saw the individual execute the instrument. When a proof is taken, the Commissioner of Deeds must place a statement on the document or attached thereto as evidence of her having taken the proof. Whatever form is used, the statement must recite all the matters that were required to be done, known, or proved on the taking of the proof, together with the name, place of residence, and substance of the declaration of the person giving proof. An acceptable form of the statement is:

"On this _____ day of _____, 19 ____, before me came (person's name), to me known to be the individual who subscribed as witness the foregoing instrument and declared that she resides at (house and street), (town or city), (state), that she knows personally (person's name), that she knows the person to be the individual described in and who executed the foregoing instrument, and that (the person) executed the foregoing instrument in her presence."

This statement must be followed by the Commissioner's signature and other information described above.

(3) **Fee.** The fee for administering an oath or taking an acknowledgement or proof is twenty-five cents.

(c) **Authentication.** "Authentication" in this case involves a County Clerk affirming the genuineness of a certificate of acknowledgement, proof, or oath taken before a Commissioner of Deeds.

The significance of authentication is as follows:

When an instrument or paper is sworn to, proved, or acknowledged before a Commissioner of Deeds within the City of New York, it can be recorded and read in evidence in any office of any County Clerk within the City of New York or in the Office of the Register of the City of New York without the need for further proof. However, for such an instrument to be read into evidence, without the need for further proof, anywhere in New York outside the five boroughs of the City, it is necessary that the instrument first be authenticated by one of the County Clerks in the City of New York.

To permit people to have instruments authenticated, a Commissioner of Deeds may file his autograph signature and certificate of appointment in the office of any County Clerk in New York City. Certificates of appointment may be obtained from the Office of the City Clerk.

HISTORICAL NOTE

Section in original publication July 1, 1991.

30 of 133 DOCUMENTS

Rules of the City of New York

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

51 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-07 Restrictions.

(a) A Commissioner of Deeds must be and remain a resident of New York City. If a Commissioner of Deeds ceases to be a New York City resident he vacates his office and must immediately notify the City Clerk.

(b) A Commissioner of Deeds appointed within the City of New York cannot perform official functions anywhere except within the five boroughs of the City of New York.

(c) A Commissioner cannot certify any document to a transaction in which the Commissioner has an interest (financial) or to which the Commissioner of Deeds is a party.

(d) A Commissioner of Deeds cannot charge a fee for administering oaths of office to: a member of the legislature; any military officer; an inspector of election; a clerk of the poll; or any other public officer or public employee.

(e) The powers of a Commissioner of Deeds are personal and cannot be delegated to anyone.

(f) A Commissioner of Deeds who is an employee or stockholder of a corporation may take the acknowledgement or proof of any party to a written instrument executed by the corporation, or may administer an oath to any other officer, employee, or stockholder of the corporation, except when the Commissioner of Deeds himself is one of the parties executing the instrument either as individual or as a representative of the corporation.

(g) A Commissioner of Deeds has no power to protest a negotiable instrument (e.g., a promissory note or bill of exchange).

(h) A Commissioner of Deeds cannot take an acknowledgement or proof of the execution of a will.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 2 COMMISSIONER OF DEEDS

§2-08 Professional Conduct.

(a) **General.** A Commissioner of Deeds is a public officer, and is so regarded under the laws of the State of New York. As such, a high standard of professional conduct is required and expected of each individual having an appointment as a Commissioner of Deeds. Moreover, the care with which a Commissioner of Deeds performs her duties can often be the only thing that ensures the integrity of a particular document. In performing the functions of his or her office, a Commissioner of Deeds must:

(1) take an acknowledgement or proof, or administer an oath, only when the individual is personally present (taking proofs or acknowledgements, or administering oaths, over the telephone or otherwise is absolutely illegal);

(2) always satisfy himself as to the true identity of the individual giving the acknowledgement or taking an oath; and

(3) always follow the appropriate forms when administering oaths, issuing certificates, etc. In addition to the prohibition against the careless performance of the duties of the office of Commissioner of Deeds, there are strict legal proscriptions against the deliberate abuse of the office:

(b) **Official misconduct.** A public servant is guilty of official misconduct when, with intent to obtain a benefit or to injure or deprive another person of a benefit:

(1) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

(2) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a Class A misdemeanor.

(NYS Penal Law §195.00.)

(c) **Issuing a false certificate. (Falsely stating that someone took an oath or gave an acknowledgement of proof.)** A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a Class E felony.

(NYS Penal Law §175.40.)

(d) **Forgery in the second degree.** A person is guilty of forgery in the second degree when, with intent to defraud, deceive, or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(1) a deed, will codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise effect a legal right, interest, obligation or status; or

(2) a public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

(3) a written instrument officially issued or created by a public office, public servant or governmental instrumentality.

Forgery in the second degree is a Class D felony.

(NYS Penal Law §170.10.)

(e) **Fees.** A public officer or other person who charges a fee for his service which is greater than the amount allowed by statute, or which charges a fee for services that were not actually rendered, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action on behalf of the person aggrieved, in which the plaintiff is entitled to treble damages. (Outline of NYS Pub. Off. Law §§67(2), (3), (4).)

(f) **Fraud in office.** A Commissioner of Deeds who, in the exercise of the powers, or in the performance of the duties of such office, shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor. (NYS Exec. Law §135-a(2).)

(g) **Acting without authority.** Anyone who holds himself out to the public as being entitled to act as a Commissioner of Deeds or conveys the impression that he is a Commissioner of Deeds, without having been appointed a Commissioner of Deeds, is guilty of a misdemeanor. (NYS Exec. Law §135-a(1).)

(h) **Penalties.** In addition to the criminal and civil penalties outlined above, any kind of misconduct in office by a Commissioner of Deeds is punishable by removal from office. Section 140 of the New York State Executive Law vests the Office of the Mayor with the power to remove a Commissioner of Deeds from office for cause shown. Commissioners have the right to answer charges brought against them. (NYS Exec. Law §140(12).) Removal from office as a Commissioner of Deeds of the City of New York disqualifies an individual from ever again being appointed to that office. In addition, that individual is disqualified from becoming a Notary Public. Anyone removed from office

as a Commissioner of Deeds who, after learning of such removal, continues to perform the functions of that office, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-01 Marriage License Application Forms.

(a) Both parties must be present in order to obtain a blank marriage license application. The prospective bride and prospective groom must fill out the application in the City Clerk's office and present it for processing.

(b) Under no circumstances shall a clerk give out a blank application for a marriage license unless both the prospective bride and prospective groom are personally present before that clerk, except that where, for religious or health reasons or, in the sole discretion of the City Clerk, by reason of other exigent circumstances, both parties to the marriage cannot be present at the same time, the City Clerk may waive the requirement imposed by subdivision (a) of this section.

(c) The foregoing do not apply to cases where City Clerk personnel must issue a marriage license in a prison or a hospital or where the parties have submitted the application for a marriage license by electronic means.

HISTORICAL NOTE

Section amended City Records July 3/7, 2008 §1, eff. Aug. 2, 2008. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 3, 2008:

These amendments to the Rules of the City Clerk provide for several changes that modernize and otherwise facilitate the procedure for applying for marriage licenses in New York City. First, the two parties applying for a marriage license will be allowed to do so individually and at different times in certain circumstances. The Office of the City Clerk has encountered instances where for religious reasons both bride-to-be and groom-to-be cannot be present in the same place at the same time. This rule change permits an application to be made under such circumstances, as well as under other exigent circumstances as the City Clerk deems appropriate. A further change enables applicants for a marriage license to submit their application via the Internet, shortening the time needed to process applications and improving the performance of the Office of the City Clerk and its ability to satisfy applicants. Finally, the Office of the City Clerk is reducing the registration fee for domestic partnership by one dollar, making it equal to the total cost of a marriage license and the initial marriage certificate.

Rules of the City of New York

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

51 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-02 Issuing Licenses Outside of the Office.

Marriage licenses may be issued only at the Marriage Bureau in the ordinary course of the business day. There are only two exceptions to this section: cases where an individual is confined to a hospital, and cases where an individual is confined in prison. Such issuance is strictly a courtesy, and is therefore entirely subject to the availability of personnel and the schedule of the office.

(a) In a hospital case, there are three requirements that must be met before a license may be issued:

(1) the parties must present a statement from the doctor indicating that the sick party is seriously ill, that he or she will be confined to the hospital for a very long period of time, that there is a possibility that the sick person will not survive the illness, and that the sick person is mentally competent to apply for the marriage license; and

(2) the parties must call ahead of time or make arrangements for the license to be issued; and

(3) the parties must be willing to furnish our clerk with transportation to and from the hospital, and must arrange on their own for someone to return to the office to pick up the marriage license after it has been prepared.

(b) In a prison case, the requirements are as follows:

(1) the parties must present a written statement from the social worker, warden, or other authorized person granting consent for the issuing of the marriage license in the prison; and

(2) the parties must contact the office ahead of time to request the license to be issued and to make all necessary

preparations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

51 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-03 Hearings Pursuant to Domestic Relations Law §15.

(a) **Production of witnesses or notarized affidavits to establish identity.** If in the opinion of the issuing clerk there appears to be some question as to the identity of one or both of the parties, the City Clerk, pursuant to the provisions of §15 of the New York State Domestic Relations Law, may compel the production of witnesses, certified official records or notarized affidavits to establish the identity of the parties.

(b) **Request for review of City Clerk's preliminary denial of marriage license.**

(1) Applicants who have been preliminarily denied a marriage license by the City Clerk may request a review of such determination by paying a $25 fee and filing a request for a review on such form as may be provided by the City Clerk no later than 30 days after such preliminary denial. The City Clerk may waive this fee upon a showing of financial hardship.

(2) **Duty of the City Clerk.** Within fifteen days of receipt of a request for review the City Clerk shall forward to the Office of Administrative Trials and Hearings (OATH) such request for review, a written statement outlining the reason for the preliminary denial of the marriage license and the documentary evidence supporting the preliminary denial, all of which documentation with the exception of the request for review shall constitute the petition. A copy of the petition shall be mailed contemporaneously to the applicant via certified mail return receipt requested.

(3) **Notice to spouse of record.** Where the marriage license was denied because of the existence in the records of the City Clerk of a prior non-terminated marriage, the City Clerk shall exert its best efforts to notify the spouse of record of the impending action. The spouse of record shall be given twenty-one days from the date of mailing to

respond to such notification. In such response, the spouse of record may request an opportunity to be heard on the issue, either in writing or at the hearing, if OATH decides a hearing is warranted. Upon request contained in such response, the City Clerk shall forward to the spouse of record all documentation exchanged among OATH, the City Clerk and the applicant.

(4) **Applicant's duty to respond.** Applicant shall, no later than thirty days after he or she receives the petition, submit in duplicate an answer to the City Clerk including therein any documentary evidence or other proof which may include notarized affidavits in support of his or her claim. Upon written request of the applicant stating the specific reason for such request, submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for applicant to submit the same. Upon receipt of the answer the City Clerk shall forward a copy thereof to OATH. Applicant's failure to respond by the deadline set forth herein, including any extension granted by the City Clerk pursuant to this sub-paragraph, shall be deemed a withdrawal of the applicant's challenge to the City Clerk's preliminary decision and such preliminary decision shall thereafter be deemed final.

(5) **Designation of OATH.** Pursuant to Charter §1048, the City Clerk designates OATH to conduct on its behalf all the reviews and hearings referred to herein.

(6) **The reviewing officer.** An administrative law judge ("ALJ") employed by OATH shall review the petition and the answer no later than fifteen days after the date of receipt of both the petition and the answer as well as any documentation presented by the spouse of record, if any. If upon such review the ALJ shall conclude that such evidence is sufficient to form a conclusion then the ALJ shall prepare no later than thirty days after receipt of all of the documents referred to in the first sentence of this paragraph a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition. Alternatively, if the ALJ shall conclude that the evidence presented is insufficient to form a conclusion, the ALJ shall convene a hearing at a date to be determined in such ALJ's sole discretion but no later than sixty days from the date of such initial review. Upon notification thereof by such ALJ, which notification may be electronic, the City Clerk, not later than five days after the date of such notification, shall notify the applicant as well as his or her attorney or other representative, if any, and the spouse of record, if any, of the date of the hearing by certified mail, return receipt requested. Such notification shall be post-marked no later than thirty days prior to the date of such hearing.

(7) **Use of expert witness.** It shall be the obligation of any party intending to present the testimony of expert witness or witnesses at the hearing to notify the ALJ and the opposing parties of such intention no later than fifteen days prior to the date of the hearing and to submit to both the ALJ and the opposing parties no later than seven days prior to the date of the hearing copies of any reports, filings or any other documentation produced by such expert witness or witnesses which such party intends to use at the hearing. The ALJ may grant an extension of time to the parties.

(8) **The hearing.** The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted. The ALJ shall have all the requisite powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law. All testimony shall be given under oath or affirmation administered by the ALJ. The City Clerk shall have the burden of demonstrating by a preponderance of the evidence that the applicant should not be granted a marriage license.

(9) The applicant and the spouse of record, if any, may be represented by an attorney or other representative of his or her choice.

(10) The applicant as well as the City Clerk and the spouse of record, if any, may have witnesses, may give testimony and may otherwise present relevant and material evidence on his or her behalf, may cross-examine witnesses and may examine any document or other item offered into evidence.

(11) A recorded copy of the record of the hearing shall be prepared by OATH; upon request a compact disc audio recording of the hearing, at no cost, or a transcript of the hearing, at a cost to be determined by OATH, may be provided.

(12) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of any of the parties or upon the ALJ's own motion and with notice to the parties.

(13) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules. In the event of any conflict of laws, the rules of this section shall be determinative and controlling.

(14) After the conclusion of the hearing, the ALJ shall prepare a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and a recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(15) **Final decision.** (i) The City Clerk's final decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action. Notwithstanding the foregoing, such final decision need not be a separate formal document and a report submitted to the City Clerk pursuant to paragraph b(6) or b(14) hereof together with a letter from the City Clerk concurring with the recommended findings of fact and recommended disposition shall constitute a final decision. In reaching such final decision, the City Clerk may review the petition and answer and memoranda of law of the parties, if any, and any record of the hearing. The City Clerk shall not be bound by the ALJ's recommendation.

(ii) A copy of such final decision shall be mailed by the City Clerk to the applicant and his or her attorney or representative, if any, and the spouse of record, if any.

(iii) Any of the aggrieved parties have the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §1, eff. Oct. 20, 2006. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 2006:

The Amendment to the Rules would provide applicants who are denied a marriage license or registration as a domestic partnership an administrative redress. Specifically, it allows the aggrieved party to challenge within thirty days and upon payment of a nominal fee any denial of a marriage license or domestic partner registration by the City Clerk. Currently persons who at the time of application have a marriage or domestic partnership listed on the records of the City Clerk and cannot prove the dissolution of such marriage or domestic partnership are denied a marriage license or domestic partnership registration, respectively, by the Office of the City Clerk pursuant to law. (This has no effect on a domestic partner seeking a marriage license since by law marriage automatically terminates the domestic partnership.) The aggrieved party's sole recourse is to bring an Article 78 proceeding. For low-income and indigent persons who cannot afford the costs of retaining an attorney, the unintended consequence of this policy is to effectively deny such applicant the right to marry or register a domestic partnership. The effect can be especially onerous given the alarming increase in identify theft. The Amendment to the Rules would offer an affordable alternative to challenge a City Clerk refusal without interfering with the current legal recourse. It would also require the spouse or domestic partner of record to be notified of the proceeding. The other changes are necessary to update the Rules of the City of New York. The

provision in the current Rules of the City of New York with respect to spouses or prospective spouses obtaining information with respect to their spouse or prospective spouse is inadequate. In many instances spouses want to know if their present spouse has fraudulently obtained a marriage certificate with a party other than the inquiring spouse subsequent to their marriage and the current rule does not permit the Office of the City Clerk to disclose such information. The Amendment to the Rules is meant to remove that restriction. Due to case law persons ordained by the Universal Life Church are not permitted to officiate marriage ceremonies under the current Rules of the City of New York. Currently persons who are ordained by many other internet-based religious organizations are allowed to register while persons who are ordained by Universal Life Church are not. The Amendment to the Rules would remove this disparity. In addition, there is no provision in the Rules of the City of New York to permit chaplains to register and the Amendment to the Rules would provide such a mechanism. The Amendment to the Rules also corrects a citation error in §3-04(b) of Title 51 of the Rules of the City of New York. Finally notarization of third-party consents would safeguard the process and consequently enhance the integrity of the marriage database which, by law, is confidential. The Office of the City Clerk wishes to ensure that the party writing the consent is indeed an authorized party and consequently avoid fraud. The City Clerk of the City of New York has re-evaluated the proposed fee based on a current cost analysis and has determined that the fee is warranted.

Rules of the City of New York

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

51 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-04 Marriage Chapel.

(a) The Office of the City Clerk performs civil marriage ceremonies only. No references to religion or deity are made.

(b) Where the personal presence of "both parents" at the wedding ceremony is required by §11-a(c) of the Domestic Relations Law, the Office of the City Clerk shall deem the requirement met when the party or parties whose consent was required for the issuance of the license is/are personally present at the wedding ceremony. All such parties must have proper identification with them showing their signature. In addition, custodial parents must present a divorce decree or death certificate; guardians must present guardianship papers.

(c) Every couple must have at least one witness who must be at least 18 years of age.

(d) Food and drink are not allowed in any City Clerk's Office chapel or chapel waiting room. The throwing of rice or other objects is also prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §2, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

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

51 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-05 Release of Marriage Records.

(a) In the ordinary course of business, marriage records shall be released only:

(1) to the parties to the marriage;

(2) to individuals presenting written authorization from one of the parties to the marriage (the authorization must be notarized); or

(3) to attorneys in cases where such records are required as evidence in a legal proceeding.

The following restrictions do not apply to records that are at least 50 years old, or to records where both parties to the marriage are deceased.

(b) Where a party to the marriage sends a third party to obtain their marriage record without a letter of authorization, that third party may make the request and pay the fee if that third party consents to having the record mailed directly to the party to the marriage. The record will not be released directly to the unauthorized third party.

(c) If a person requires information regarding a current or prospective spouse's marital history, the Office of the City Clerk will, upon the payment of the appropriate search fee, the furnishing of an approximate marriage date, and sufficient information to search under at least one party's name, confirm only the fact of a prior marriage or a subsequent fraudulent acquisition of a marriage certificate with a party other than the inquiring spouse subsequent to their marriage by a "yes" or "no" answer. Under no circumstances will a copy of the record be provided. Nothing in this

rule shall be construed to permit a divorced person to obtain the information described in this sub-paragraph with respect to his or her former spouse.

(d) Any requestors whose requests are refused by the Records Division pursuant to the above subdivisions, but who feel nevertheless that their requests are for a statutorily proper purpose, may send their requests in writing for review by the City Clerk, at 1 Centre Street-Room 265, New York, New York, 10007. Requests may be approved or denied in whole or in part. All approvals shall be in writing.

(e) All over-the-counter requestors must present identification when applying to obtain a marriage record.

(f) Over-the-counter requests may be honored only when accompanied by payment in the form of a money order or certified check.

(g) A person making an over-the-counter record request involving a multi-year search pre-dating 1973 will be asked to return for the results another day, or can have the record mailed to them if they prefer.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Sept. 20, 2006 §3, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Subd. (c) amended City Record Sept. 20, 2006 §4, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

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

51 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 3 MARRIAGES

§3-06 Marriage Officiant Registration.

Pursuant to §11-B of the Domestic Relations Law, the Office of the City Clerk will accept the registration of officiants to perform wedding ceremonies within the City of New York upon presentation of documentary proof of authority as outlined below.

(a) In the case of clergy, the person wishing to register (hereafter "the registrant") must comply with one of the following:

(1) In cases where the denomination publishes a directory of its clergy, the registrant may show that he or she is listed in that directory. If the registrant's name does not yet appear in the denominational directory, the registrant claiming membership in that denomination may instead present written confirmation for that membership from the body that puts out the directory. Such confirmation can also consist of a certificate or letter showing that the registrant graduated from the seminary or theological school pertaining to the denomination.

(2) In cases where the denomination does not have such a directory, the registrant must show several pieces of documentary proof of authority. First, the registrant must present an ordination certificate accompanied, if necessary, by an English translation thereof. In lieu of an ordination certificate, the registrant must present a "license to minister" or a letter of appointment from his or her religious body, i.e., from its hierarch or its board of trustees. Second, the registrant must present a letter from his or her local congregation verifying that he or she is the pastor or associate pastor of that congregation, and that the congregation therefore consents to the registering of that individual. Lastly, if the church is incorporated, the registrant must present a copy of the articles or incorporation. If the church is not incorporated, the registrant must submit a statement as to the location of the house of worship, the reason for its founding, the number of

trustees, the approximate size of its congregation, and how often it meets.

(3) In cases where the registrant belongs to a denomination that does not have a directory and does not grant certificates of ordination or license to minister, the registrant must present a letter stating that he or she is the recognized spiritual leader of a congregation, and that the congregation therefore consents to the registering of that individual. The registrant must also submit a statement as to the location of the house of worship, the reason for its founding, the number of trustees, the approximate size of its congregation, and how often it meets.

(b) In the case of judges, registrants must present identification that shows them to be members of the judiciary of the Unified Court System of the State of New York. In the case of retired judges, registrants must also present proof that they have been certified pursuant to Paragraph (j) of Subdivision two of §212 of the Judiciary Law.

(c) In the case of all other civil officials authorized to solemnize weddings, registrants must present documentary evidence identifying themselves as holders of their respective offices.

(d) In the case of chaplains of the armed forces of the United States, registrants must present active military identification that indicates their occupation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Sept. 20, 2006 §5, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Subd. (d) added City Record Sept. 20, 2006 §6, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

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

51 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-01 Domestic Partner Affidavit Form.

(a) Both parties must be present at the time of submitting their affidavit to register as domestic partners at the City Clerk's office. Parties must provide acceptable identification as specified in §4-03 of these Rules, and register during regular business hours.

(b) Both partners must sign the affidavit in the presence of a Notary Public or Commissioner of Deeds who will then sign and notarize the document before the affidavit is submitted for registration in the City Clerk's office.

(c) The foregoing do not apply to cases where City Clerk personnel are processing a domestic partnership registration in a prison or a hospital, pursuant to §4-02 of these Rules.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-02 Accepting Registration Outside of the Office.

Domestic partners may register at the office of the City Clerk during regular business hours. Exceptions to this provision will be made only in those cases where an individual is confined to a hospital and in cases where an individual is confined in prison. The acceptance of prison or hospital registration is a courtesy, and is therefore entirely subject to the availability of personnel and the schedule in the office,

(a) In a hospital case, the following requirements must be satisfied before registration will occur:

(1) The parties must present a statement from the doctor or hospital indicating that the sick party is seriously ill, that the party will be confined to the hospital for a very long period of time, that there is a possibility that the sick person will not survive the illness, and that the sick person is mentally competent to apply for registration of a domestic partnership;

(2) The parties must call ahead of time or make arrangements for the registration application to be completed; and

(3) The parties must be willing to furnish City Clerk personnel with transportation to and from the hospital and must arrange on their own for someone to return to the City Clerk office to pick up the domestic partner registration certificate and pay any registration filing fee.

(b) In a prison case, the requirements are as follows:

(1) The parties must present a written statement from the social worker, warden or other authorized person

granting consent for the processsing of the domestic partner registration in the prison; and

(2) The parties must contract the City Clerk's office ahead of time to request that a domestic partner affidavit be registered and to make all necessary preparations.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-03 Identification to Register.

1. **Acceptable forms of identification.** At the time of submitting an application to register a domestic partnership, each party must present identification. Identification documents acceptable for registration purposes are:

(a) valid drivers license, learner's permit or identification card issued by the department of motor vehicles of a state or territory of the United States;

(b) original birth certificate;

(c) valid passport;

(d) school records;

(e) immigration card;

(f) employee identification card; and

(g) such form of identification deemed acceptable by the City Clerk.

All documents that are not written in English must be translated into English with an affidavit attesting to the accuracy of the translation.

2. **Production of witnesses or notarized affidavits to establish identity for persons who do not possess forms**

of identification pursuant to subdivision 1 above. If in the opinion of the issuing clerk there appears to be some question as to the identity of one or both of the parties to the prospective domestic partnership, the City Clerk may compel the production of witnesses, certified official records or notarized affidavits to establish the identity of the parties.

3. **Request for review of City Clerk's preliminary denial of domestic partnership.**

(a) Applicants who have been preliminarily denied a domestic partnership by the City Clerk may request a review of such determination by paying a $25 fee and filing a request for a review on such form as may be provided by the City Clerk no later than 30 days after such preliminary denial. The City Clerk may waive this fee upon a showing of financial hardship.

(b) **Duty of the City Clerk.** Within fifteen days of receipt of a request for review the City Clerk shall forward to the Office of Administrative Trials and Hearings (OATH) such request for review, a written statement outlining the reason for the preliminary denial of the domestic partnership and the documentary evidence supporting the preliminary denial all of which documentation with the exception of the request for review shall constitute the petition. A copy of the petition shall be mailed contemporaneously to the applicant via certified mail return receipt requested.

(c) **Notice to domestic partner or spouse of record.** Where the domestic partnership registration was denied because of the existence in the records of the City Clerk of a prior non-terminated domestic partnership registration or marriage, the City Clerk shall exert its best efforts to notify the domestic partner or spouse of record of the impending action. The domestic partner or spouse of record shall be given twenty-one days from the date of mailing to respond to such notification. In such response, the domestic partner or spouse of record may request an opportunity to be heard on the issue, either in writing or at the hearing, if OATH decides a hearing is warranted. Upon request contained in such response, the City Clerk shall forward to the domestic partner or spouse of record all documentation exchanged among OATH, the City Clerk and the applicant.

(d) **Applicant's duty to respond.** Applicant shall, no later than thirty days after he or she receives the petition, submit in duplicate an answer to the City Clerk including therein any documentary evidence or other proof which may include notarized affidavits in support of his or her claim. Upon written request of the applicant stating the specific reason for such request submitted no later than five days prior to the due date for such answer, the City Clerk may for good cause grant an extension of time for applicant to submit the same. Upon receipt of the answer the City Clerk shall forward a copy thereof to OATH. Applicant's failure to respond by the deadline set forth herein, including any extension granted by the City Clerk pursuant to this paragraph, shall be deemed a withdrawal of the applicant's challenge to the City Clerk's preliminary decision and such preliminary decision shall thereafter be deemed final.

(e) **Designation of OATH.** Pursuant to Charter §1048, the City Clerk designates OATH to conduct on its behalf all the reviews and hearings referred to herein.

(f) **The reviewing officer.** An ALJ employed by OATH shall review the petition and the answer no later than fifteen days after the date of receipt of both the petition and the answer as well as any documentation presented by the domestic partner or spouse of record, if any. If upon such review the ALJ shall conclude that such evidence is sufficient to form a conclusion then the ALJ shall prepare no later than thirty days after receipt of all of the documents referred to in the first sentence of this paragraph a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition. Alternatively, if the ALJ shall conclude that the evidence presented is insufficient to form a conclusion, the ALJ shall convene a hearing at a date to be determined in such ALJ's sole discretion but no later than sixty days from the date of such initial review. Upon notification thereof by such ALJ, which notification may be electronic, the City Clerk, not later than five days after the date of such notification, shall notify the applicant as well as his or her attorney or other representative, if any, and the domestic partner or spouse of record, if any, of the date of the hearing by certified mail return receipt requested. Such notification shall be

post-marked no later than thirty days prior to the date of such hearing.

(g) **Use of expert witness.** It shall be the obligation of any party intending to present the testimony of expert witness or witnesses at the hearing to notify the ALJ and the opposing parties of such intention no later than fifteen days prior to the date of the hearing and to submit to both the ALJ and the opposing parties no later than seven days prior to the date of the hearing copies of any reports, filings or any other documentation produced by such expert witness or witnesses which such party intends to use at the hearing. The ALJ may grant an extension of time to the parties.

(h) **The hearing.** The ALJ shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted. The ALJ shall have all the requisite powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe the requirements of due process and effectuate the purposes and provisions of applicable law. All testimony shall be given under oath or affirmation administered by the ALJ. The City Clerk shall have the burden of demonstrating by a preponderance of the evidence that the applicant should not be granted a domestic partnership.

(i) The applicant and the domestic partner or spouse of record, if any, may be represented by an attorney or other representative of his or her choice.

(j) The applicant as well as the City Clerk and the domestic partner or spouse of record, if any, may have witnesses, may give testimony and may otherwise present relevant and material evidence on his or her behalf, may cross-examine witnesses and may examine any document or other item offered into evidence.

(k) A recorded copy of the record of the hearing shall be prepared by OATH; upon request a compact disc audio recording of the hearing, at no cost, or a transcript of the hearing, at a cost to be determined by OATH, may be provided.

(l) At the discretion of the ALJ, the hearing may be adjourned for good cause upon the request of any of the parties or upon the ALJ's own motion and with notice to the parties.

(m) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules. In the event of any conflict of laws, the rules of this section shall be determinative and controlling.

(n) After the conclusion of the hearing, the ALJ shall prepare a report summarizing the evidence presented, an analysis of the legal and factual issues, recommended findings of fact and a recommended disposition. Such report shall be sent to the City Clerk for a final determination of the facts and a final disposition.

(o) **Final decision.** (i) The City Clerk's final decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action. Notwithstanding the foregoing, such final decision need not be a separate formal document and a report submitted to the City Clerk pursuant to paragraph 3(f) or 3(n) hereof together with a letter from the City Clerk concurring with the recommended findings of fact and recommended disposition shall constitute a final decision. In reaching such final decision, the City Clerk may review the petition and answer and memoranda of law of the parties, if any, and any record of the hearing. The City Clerk shall not be bound by the ALJ's recommendation.

(ii) A copy of such final decision shall be mailed by the City Clerk to the applicant and his or her attorney or representative, if any, and the domestic partner or spouse of record, if any.

(iii) Any of the aggrieved parties have the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §7, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-04 Domestic Partner Registration Certificate.

Upon completion of the application process, the City Clerk will issue a domestic partnership registration certificate to the registered partners.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-05 Release of Domestic Partners Registration Records.

Domestic Partner Registration information and documents shall not be subject to public inspection or disclosure. In the ordinary course of business, domestic partner records only shall be released to either of the parties to the registration in person, after proper identification has been submitted to the City Clerk staff. No requests shall be accepted through the mail or over the telephone. Further, domestic partnership information released pursuant to written authorization from one of the parties to the domestic partnership, shall only be released if such written authorization is notarized.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §8, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-06 Modification of Domestic Partner Registration.

After a domestic partnership has been registered by the City Clerk, such record will only be modified or amended upon the filing of a written request for amendment form and offering adequate evidence to justify the proposed change of the record.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Rules of the City of New York

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

51 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-07 Termination of Domestic Partnership.

(a) Either or both of the parties to a registered domestic partnership, may file a termination statement with the City Clerk.

(b) If the termination statement is not signed by both, then the party who has not signed the termination must be given notice of such termination by registered mail, return receipt requested.

(c) The City Clerk will provide written notice of the filing of a termination to both parties of the registered partnership.

(d) The termination statement must be filed in person except that in circumstances where in-person filing is impossible or such filing would create a hardship, the City Clerk may permit such filing by certified mail.

HISTORICAL NOTE

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Subd. (d) added City Record Sept. 20, 2006 §9, eff. Oct. 20, 2006. [See T51 §3-03 Note 1]

Rules of the City of New York

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

51 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 51 City Clerk

CHAPTER 4 DOMESTIC PARTNER REGISTRATION

§4-08 Registration Fees.

(a) The registration fee for filing a domestic partnership is thirty-five dollars.

(b) The fee for filing a termination of a domestic partnership is twenty-seven dollars.

(c) The fee for obtaining a second or subsequent certificate for a registered domestic partnership is nine dollars per certificate.

(d) The fee for amending a domestic partnership registration is twenty-seven dollars

(e) All fees required under this section are to be only paid in cash.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2003 eff. Sept. 14, 2003. Note: Subd. (e) was inadvertently

omitted from layout and is included here. [See Note 1]

Section added City Record Apr. 12, 1993 eff. May 12, 1993.

Subd. (a) amended City Records July 3/7, 2008 §1, eff. Aug. 2, 2008. [See T51 §3-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 15, 2003:

This rule is promulgated pursuant to the authority of City Clerk of the City of New York's Rules set forth in §§48 and 1043 of the New York City Charter. This rule will increase certain fees relating to domestic partnership. Specifically, the rule increases the fees for domestic partnership registration, termination or amendment of domestic partnership, and second or subsequent certificates. The City Clerk of the City of New York has re-evaluated these fees based on a current cost analysis and has determined that a fee increase is warranted.

By increasing these fees imposed by the City Clerk's Office, New York City will be able to recoup the costs of providing these services to the public.

Rules of the City of New York

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

52 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-01 Scope of Rules.

Chapters 1 through 9 are the requirements applicable to candidates seeking nomination for election or election to the office of mayor, comptroller, public advocate, borough president, or member of the City Council.

Chapter 10 pertains to the Voter Guide and applies to all candidates seeking to have statements included in the Voter Guide.

Chapter 11 contains the requirements for transition and inauguration activities, which apply to all elected candidates.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Section amended City Record July 20, 1999 §1, eff. Aug. 19, 1999.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 11, 2005

The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York.

The amendments effect the following specific changes, and will take effect thirty days after publication in **The City Record,** except that (i) the removal of Rule 1-08(j) and (ii) the amendments to Rules 1-08(a), (b), and (d)(1), (2), insofar as the amendments refer to Rule 1-08(j), will take effect January 1, 2006.

Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, et seq.) (the "Act") contained in Local Laws Nos. 58, 59, and 60: [of 2004] 1-01 (Scope of Rules); 1-02 (definitions of "Authorized committee," "Candidate," "Certification," "Disclosure statement," "Domestic partner," "Fundraising agent," "Participant," "Receipts," "Rule" and "Treasurer"); 1-03(a) (restrictions on use of receipts); 1-03(b) (exceptions to restrictions on use of receipts); 1-04(a) (receipt of contributions); 1-04(b) (deposit of contributions); 1-04(c) (return of contributions); 1-04(e) (contributions from corporations); 1-04(f) (attributing a contribution to an election); 1-04(g) (in-kind contributions); 1-04(j) (earmarked contributions); 1-04(l) (tickets for fund-raising events); 1-04(n) (solicitation of contributions for elections not subject to the Act); 1-04(o) (court-ordered rerun elections); 1-04(p) (joint fundraising; endorsements); 1-04(q) (anticipated runoff primary or runoff special elections); 1-04(r) (contributions by minors); 1-05(d) (third party repays loans); 1-05(h) (attributing a loan to an election); 1-06 (special elections); 1-07(a) (use of funds); 1-07(b) (surplus funds); 1-07(c) (contribution limit; prohibited contributions); 1-07(d) (related expenditures); 1-08(a) (expenditures); 1-08(b) (making an expenditure); 1-08(c) (attributing an expenditure to an election); 1-08(d) (expenditure limits); 1-08(f) (independent expenditures); 1-08(g) (spending public funds); 1-08(h) (joint expenditures; endorsements); 1-08(i) (expenditures by check); 1-08(j) (initial expenditures); 1-08(l) (expenditure limit compliance); 1-08(m) (fundraising for more than one election); 1-08(n) (fundraising solicitations); 1-08(o) (expenditure limit compliance for transfers); 1-09(a) (date received); 1-11 (filer registration); 2-01(a) (contents); 2-01(b) (legal effect); 2-01(d) (amendments); 2-01(e) (petition for extraordinary circumstances); 2-02 (breach of certification); 2-06(a) (deposit of receipts); 2-06(b) (separate accounts for different elections); 2-06(c) (runoff primary and runoff special elections); 2-06(e) (personal and business funds); 2-08(a) (notice); 2-08(b) (disclosure obligations); 2-08(c) (ineligibility for public funds); 2-08(d) (inclusion in voter guide); 2-09(a) (No "Opting-Out"); 2-09(b) ("off the ballot" termination); 2-09(c) ("ceased campaigning" termination); 2-09(d) (termination by Board); 2-10 (limited participation); 2-11 (non-participation); 3-01 (disclosure statements); 3-02(a) (first disclosure statement); 3-02(b) (semi-annual disclosure statements); 3-02(c) (pre-election disclosure statements); 3-02(d) (post-election disclosure statements); 3-02(e) (post-election disclosure statements); 3-02(f) (exceptions); 3-02(i) (prospective participants); 3-03(a) (reporting period); 3-03(c) (contributions and other receipts); 3-03(e) (expenditures); 3-04(a) (threshold; back-up documentation); 3-04(e) (disclosure statement review); 3-04(f) (omitted); 3-06 (forms and disclosure statements); 3-07 (insufficient disclosure statements); 3-08 (verification); 3-09 (supplemental documents); 3-11(a) (proof of filing with the conflicts of interest board; payment of penalties); 4-01(a) (generally); 4-01(b) (receipts); 4-01(c) (in-kind contributions); 4-01(d) (bills); 4-01(e) (disbursements); 4-01(f) (bank records); 4-01(g) (loans); 4-01(h) (subcontracted goods and services); 4-01(i) (fundraisers); 4-01(j) (campaign offices); 4-01(k) (political advertisements and literature); 4-01(l) (vendors); 4-01(m) (advances); 4-03(a) (six-year retention priod); 4-03(b) (custodian and location); 4-04 (assistance to candidates; records); 4-05(a) (audits); 4-06 (prospective participants); 5-01(a)(3) (Board determines eligibility); 5-01(d) (validity of matchable contribution claims and projected rate of invalid claims); 5-01(e) (withholding of public funds); 5-01(f) (basis for ineligibility determination); 7-01(a) (initiation of proceeding); 7-01(c) (contents of complaint); 7-01(f) (investigation); 7-02(a) (determination that complaint lacks merit); 7-02(c) (notice and opportunity to contest); 7-02(d) (conciliation); 7-02(f) (hearings); 7-03(a) (determination of eligibility); 7-03(b) (generally); 7-03(c) (facial determinations); 7-03(d) (petitions); 7-03(f) (notice of petition); 7-03(g) (response to the petition); 7-03(h) (hearing); 7-03(i) (notice of determination); 7-03(k) (reconsideration); 7-04 (advisory opinions); 7-05 (contribution and expenditure limit adjustments); 9-02(a) (exceptions); 9-02(b) (enhancements); 9-03(a) (verification); 9-03(b) (deficient submission; legibility); 10-02 (general information); 10-02(b) (Voter Guide); 11-03(c)(3), 11-04, 11-05(e), (f), and (g) (Transition and Inauguration Entities).

47 of 133 DOCUMENTS

Rules of the City of New York

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

52 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-02 Definitions.

Act. "Act" means the New York City Campaign Finance Act, codified in Chapter 7 of Title 3 of the Code (§3-701, **et seq.**).

"Advance" means a payment for goods or services on behalf of a campaign made with the expectation that the payment will be reimbursed by the campaign. An advance is considered to be an in-kind contribution from the person making the advance until it has been reimbursed by the campaign, and a campaign may not accept an advance from a prohibited source.

Authorized committee. "Authorized committee" means an authorized committee as defined in the Act. Except as otherwise specified, the requirements of these Rules do not apply to committees that are not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules. An authorized committee is "not involved in an election in which the candidate is a participant, limited participant or non-participant as defined in these Rules" only if the committee does not, at any time, accept contributions, loans, or other receipts, or make expenditures, including expenditures of surplus funds, in that election, or aid or otherwise take part in that election.

Board. "Board" means the Campaign Finance Board established pursuant to §3-708 of the Code.

Business dealings with the city. "Business dealings with the city" means business dealings with the city as defined in the Act.

Candidate. "Candidate" means a candidate as defined in New York Election Law Article 14. Except as otherwise provided in these Rules, a "candidate" includes every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate.

Certification. "Certification" means the certification filed by participants or limited participants to indicate that they have chosen to join the Program.

"Charter" means the New York City Charter.

Code. "Code" means the Administrative Code of the City of New York.

Contribution. "Contribution" means a contribution as defined in the Act.

Disclosure statement. "Disclosure statement" means the campaign finance disclosure statement filed with the Board under Chapter 3 of these rules.

Doing business database. "Doing business database" means the doing business database as defined in the Act.

Domestic partner. "Domestic partner"means a domestic partner as defined in §1-112(21) of the Code.

Election. "Election" means any primary, runoff primary, special, runoff special, or general election for nomination or election.

Entity. "Entity" means any organization of one or more individuals, and includes any parent, subsidiary, branch, division, department, or local unit thereof.

Federal Form. "Federal Form" means a report of receipts and disbursements required to be filed by a candidate or political committee with the Federal Election Commission.

Fund. "Fund" means the New York City Election Campaign Finance Fund established by the Act.

"Fundraising agent" means any of the following persons or entities that have accepted or may accept contributions on behalf of the candidate:

(1) paid or volunteer full-time campaign workers; or

(2) commercial fundraising firms retained by the candidate and the agents thereof.

In-kind contribution.

(a) "In-kind contribution" means:

(1) a gift, subscription, loan, advance of, or payment for, any thing of value (other than money) made to or for any candidate or authorized committee; and

(2) the payment by any person other than an authorized committee of compensation for the personal services of another person which are rendered to the candidate or authorized committee without charge.

(b) "In-kind contribution" does not include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee.

Intermediary. "Intermediary" means an intermediary as defined in the Act.

Labor organization. "Labor organization" means a labor organization as defined in the Act.

Matchable contribution. "Matchable contribution" means a matchable contribution as defined in the Act.

Multicandidate committee. "Multicandidate committee" means a political committee authorized to support more than one candidate, and includes any committee subject to §14-114(4) of the New York Election Law and any party or constituted committee.

Parent corporation. [Repealed]

Participant. "Participant" means a candidate for nomination or election to the office of mayor, public advocate, comptroller, borough president, or member of the City Council who has chosen to join the Program for an election by filing a written certification pursuant to §3-703(1)(c) of the Code. "Limited participant" means a candidate who has chosen to join the Program for an election by filing a written certification pursuant to §3-718(1)(iii) of the Code. "Non-participant" means a candidate for such office who has not filed either certification. Except as otherwise provided in these Rules, a "participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-703(1)(e) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "limited participant" includes the candidate, the principal committee authorized by the candidate pursuant to §3-718(1)(iv) of the Code, the treasurer of such committee, and any other agent of the candidate. Except as otherwise provided in these Rules, a "non-participant" includes the candidate, every political committee authorized by the candidate for the covered election, the treasurer of each such committee, and any other agent of the candidate.

Political committee. "Political committee" means a political committee as defined in the Act.

Principal committee. "Principal committee" means the principal committee as defined in the Act.

Program. "Program" means the New York City Campaign Finance Program established by the Act.

Public funds. "Public funds" means monies disbursed from the Fund.

Receipts. "Receipts" include monetary and in-kind contributions, loans, and any other payment received by a candidate. "Other receipts" are payments that are not contributions or loans, such as interest, dividends, expenditure refunds, proceeds from sales or leases of assets, and any other sources of income.

Reporting period. "Reporting period" means a time period covered by a disclosure statement, as described in §3-03.

Rule. "Rule" means a rule issued by the Board. The phrase "these Rules" means any and all rules adopted by the Board.

State form. "State form" means a statement of campaign receipts and expenditures required to be filed by a candidate or political committee with the New York State or City Board of Elections.

Transfer. "Transfer" means any exchange of funds or any other thing of value between political committees, other than multicandidate committees, authorized by the same candidate pursuant to §14-112 of the New York Election Law. In §2-06 the term "transfer" refers to funds exchanged between different bank or other depository accounts.

Treasurer. "Treasurer" means the treasurer of any authorized committee involved in a covered election, except as otherwise provided in these Rules.

Unspent campaign funds. "Unspent campaign funds" means, for a participant who received public funds, the amount to be repaid to the Board under §3-710(2)(c) of the Code. This amount equals:

(1) monetary contributions; plus

(2) other receipts; plus

(3) public funds; plus

(4) loans; accepted in all elections in which the candidate was a participant held in a single calendar year or a special election; minus

(5) all disbursements, including loan repayments and contribution refunds, and all outstanding debt incurred by the participant in all reporting periods for those elections, but excluding any disbursements determined by the Board not to have been made in furtherance of a political campaign for a covered election such as disbursements listed in §3-702(21)(b) of the Code and any disbursements for which the presumption set forth in subparagraphs one through eleven of §3-702(21)(a) of the Code has been rebutted. The amount of unspent campaign funds may not exceed the total public funds accepted by the participant. Funds received and disbursements made after the date of the issuance of the participant's final audit report shall not be included in the participant's unspent funds calculation.

HISTORICAL NOTE

Section amended City Record Sept. 5, 1991 eff. Oct. 5, 1991.

Section in original publication July 1, 1991.

Advance added City Record May 15, 2008 §1, eff. June 14, 2008. [See Note 7]

Affiliated committee definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Affiliated corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Authorized committee amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01

Note 1]

Business dealings with the city added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

Candidate amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Certification amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Charter definition added City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See Note 2]

Disclosure statement amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Doing business database added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

Domestic partner amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Election amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Fundraising agent amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Labor organization added City Record Oct. 26, 2007 §1, eff. Nov. 25, 2007. [See Note 6]

On the Ballot definition added City Record Aug. 7, 2002 Part A, eff. Sept. 6, 2002. [See Note 1]

Parent corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52

§1-04 Note 1]

Participant amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Principal committee amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Receipts amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rule amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Stateform amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subsidiary corporation definition repealed City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Surplus funds repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Surplus public funds amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Transfer treasurer amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Treasurer amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Unspent campaign funds amended City Record Oct. 23, 2008 §1, eff. Nov. 22, 2008. [See Note 8]

DERIVATION

Authorized committee amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Authorized committee amended City Record May 19, 1994 eff. June 18, 1994.

Authorized committee amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Disclosure statement amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Domestic partner amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Domestic partner definition added City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See Note 3]

Fundraising agent definition amended City Record Aug. 7, 2002 Part A, eff. Sept. 6, 2002. [See Note 1]

Fundraising agent definition added City Record July 20, 1999 §2, eff. Aug. 19, 1999. [See Note 2]

Participant amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Participant definition amended City Record Aug. 7, 2002 Part D Subpart 1 eff. Sept. 6, 2002.

Participant amended City Record Oct. 10, 1995 §1, eff. Nov. 9, 1995. [See Note 4]

Participant amended City Record May 19, 1994 eff. June 18, 1994.

Participant amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Principal committee amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Principal committee designation repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Rule amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Treasurer amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

Definitions

1. **Definition of Fundraising Agent** (§1-02)

The rule amends §1-02 to eliminate from the definition of "fundraising agent" certain individuals engaged in fundraising on behalf of candidates. During the 2001 elections, some candidates received significant fundraising assistance from individuals who were classified as fundraising agents under §1-02. As a result, such candidates were not required to report contributions connected with specific fundraising agents as they would for intermediaries. Both during the elections and at the Board's post-election public hearings, a number of individuals and organizations suggested that the Board amend §1-02 to require such disclosure in future elections. The amended rule requires such disclosure.

2. **Definition of "On the Ballot"** (§1-02)

Pursuant to §3-703(1)(a) of the Administrative Code of the City of New York (the "Code"), a participant in the Campaign Finance Program is eligible to receive public funds only if he or she is "on the ballot." The amendment to §1-02 inserts the definition of "on the ballot" into the definitions section of the Board rules to clarify that a candidate may be considered "on the ballot" only if he or she is on the ballot as defined in state law (**i.e.,** only if he or she is listed among the candidates on the voting machine used for the election).

2. Statement of Basis and Purpose in City Record July 20, 1999: **Technical Changes** In addition to various other technical changes, amendments to shorten and/or simplify the rules, without substantive change, are made in Rules 1-02, 1-04(h) (other than the deletion of references to contributions by corporations, described above), (i), and (j), 1-08(d), (j), and (l), 1-09(a)(1), 1-11, 3-03(b) and (c), 3-07, 3-09, 4-01(a), and 5-01(b).

3. Statement of Basis and Purpose in City Record Oct. 9, 1998: **Explanation, Basis, and Purpose** Campaign Finance Board rules are codified in Title 52 of the Official Compilation of the Rules of the City of New York. The new rules implement changes in the New York City Campaign Finance Act adopted in Local Law No. 27 of 1998, which was signed into law by the Mayor on July 7, 1998. The new law treats domestic partners, registered in accordance with its provisions, in the same manner as spouses as follows:

· An exception is added to the definition of "intermediary" for the delivery of a contribution by the contributor's domestic partner. Administrative Code §3-702(12).

· Candidates joining the Campaign Finance Program may not use for a covered election the personal funds or property of a domestic partner in an amount that exceeds the Program's contribution limits. Administrative Code §3-703(1)(h).

· Public funds paid to a candidate joining the Program may not be used for payments to the candidate's domestic

partner. Administrative Code §3-704(2)(b).

The new rules codify and implement these changes in the law.

4. Statement of Basis and Purpose in City Record Oct. 10, 1995: Disclosure **Other** (R. 1-02; 3-03(c)(3), (e)(3); 3-07; 4-01(m); 9-02(b)) The rules exempt prospective participants from stating when the threshold is met, because they may not yet have determined the office they will be seeking, and prohibit the amendment or resubmission of disclosure statements unless expressly authorized or requested by the Board. The rules reduce disclosure requirements for advances by providing for disclosure of aggregate information and record keeping to document the details of these transactiaons. Following State Board of Elections rules, participating candidates are permitted to defer disclosure of subcontracts over $5,000 until the first post-election disclosure statement. In addition, for a special election, the deadline for requesting approval of an alternate disclosure statement format is changed from four weeks to three business days before the filing is due.

5. Statement of Basis and Purpose in City Record May 5, 2003: Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq.)** (the "Act") contained in Local Law No. 12 of 2003: 1-02 (definitions of "authorized committee," "disclosure statement," "election," "participant," "principal committee," and "treasurer"); 1-03(a) (restrictions on use of receipts); 1-04(b) (deposit of contributions); 1-04(c) (restrictions on return); 1-04(r) (contributions by minors); 1-08(d) (expenditure limits); 1-08(g)(1) (spending public funds); 1-08(g)(2)(x) (qualified campaign expenditures); 1-08(h) (joint expenditures; endorsements); 1-08(j)(1)(ii) (initial expenditures); 1-08(l) (expenditure limit compliance); 1-09(a)(3)(iv) (disclosure statements); 1-11 (prospective participants); 2-01(a) (certification); 2-06(e) (personal and business funds); 3-02(f)(5) (authorized committees other than the principal committee); 3-02(i) (prospective participants); 3-03(a)(2) (first disclosure statement); 3-03(c)(1) (disclosure statement basic contents); 3-03(d) (loans); 3-08 (electronic format); 4-01(b)(2), 4-01(b)(3) (receipts); 4-01(i) (fundraisers); 4-01(m) (advances); 5-01(d)(1), 5-01(d)(2), 5-01(d)(21), 5-01(d)(27) (validity of matchable contribution claims); 5-01(i)(1) (first payments for an election); 5-03(f) (other reasons for repayment); 7-04 (advisory opinions); and 9-02(a)(1) (non-electronic document submission). Additional amendments are described below.

6. Statement of Basis and Purpose in City Record Oct. 26, 2007: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in The City Record on April 23, 2007. The amendments effect the following specific changes, and will take effect thirty days after final publication in The City Record; provided, however, that pursuant to section thirty-eight of Local Law 34 of 2007, amendments to Rule 5-01(a)(5) and (d)(3) will take effect thirty days after the Board has certified to the Mayor and City Council one component of the "doing business database" pursuant to section thirty-seven of Local Law 34 of 2007, and, pursuant to section forty-one of Local Law 34 of 2007, amendments to Rules 1-04(d), (e), (g), and (i), 1-05(c), 1-08(d), (g), and (l), 2-01(b) and (f), 2-11(a) and (b)(3), 2-12, 3-03(c)(8), 4-05(a) and (b), 5-01(a)(4), 5-01(i), 5-02(a), 5-03(c), (d), (e), (f), and (g), 7-02(b), (c), and (f), 7-03(a), 7-05(a) and (b), 9-01(a) and (b), and 11-04(b) and (c) will take effect on January 1, 2008, and will apply only to elections held on or after that date. Amendments to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §3-701, et seq.) (the "Act") contained in Local Law Nos. 105 of 2005 and 34 of 2007: 1-02 (definitions of "Doing business database," "Business dealings with the city," and "Labor organization"); 1-04(d) (contributions from political committees); 1-04(e) (contributions from corporations, limited liability companies, and partnerships); 1-04(g)(4) (in-kind contributions); 1-04(h) (contributions from a single source); 1-04(i) (contributions from partnerships and limited liability corporations); 1-05 (loans); 1-08(d) (expenditure limits); 1-08(g) (spending public funds); 1-08(l) (expenditure limit compliance); 2-01(b) (certification); 2-01(f) (rescission); 2-11(a) and (b) (non-participation); 2-12 (mandatory training); 3-03(c)(1) (contributions and other receipts); 3-03(c)(8) (partnerships); 4-01 (records to be kept); 4-05 (audits); 5-01(a) (payment procedure); 5-01(d) (validity of matching contribution claims and projected rate of invalid claims); 5-01(i) (pre-election payments); 5-02(a) (post-election written petitions for review); 5-03(c) (excess public fund payments); 5-03(d) (improper use of public funds); 5-03(e) (unspent campaign funds); 5-03(f) (other

reasons for repayment); 5-03(g) (repayment determinations); 7-02(b) (participant not eligible for public funds); 7-02(c) (notice and opportunity to contest); 7-02(f) (adjudications in accordance with section 1046 of the Charter); 7-03(a) (determination of eligibility); 7-05(a) (adjustment of contribution limits); 7-05(b) (adjustment of expenditure limits); 9-01(a) (electronic submission generally); 9-01(b) (C-SMART); and 11-04 (restrictions).

7. Statement of Basis and Purpose in City Record May 15, 2008: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in **The City Record** on April 23, 2007. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**: Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq**.) (the "Act") contained in Local Law Nos. 34 and 67 of 2007: 1-04(c) (returning receipts); 2-12 (mandatory training); 3-03(c) (disclosure statement contents; 4-01(b)(5) (intermediary contribution statements); 4-05(b) (audit training); 5-01(a) (payment procedure); 5-01(d) (validity of matchable contribution claims and projected rate of invalid claims); 7-02(c) (notice and opportunity to contest). Ten additional amendments are described below: Definitions (Rule 1-02) The new rule defines the term "advance." Contributions from Political Committees (Rule 1-04(d)) The amendments clarify that participants may only accept contributions from political committees that have registered with the Board for the current election. Contribution Limit; Prohibited Contributions (Rule 1-07(c)) The amendments clarify that the requirement that candidates demonstrate that any transferred funds derive solely from contributions for which the candidate has obtained records demonstrating the contributors' intent to designate the contributions for the covered election applies only to participants. Filer Registration (Rule 1-11) The amendments clarify the requirements for the filer registration. Certification (Rule 2-01) The amendments clarify the requirements for the certification. Breach of Certification (Rule 2-02) The amendment clarifies that the submission of substantial false information or documentation to the Board in order to avoid a finding of violation or a repayment determination will be considered a breach of certification. First Disclosure Statement (Rule 3-02(a)(2)) The amendments clarify the filing requirements for the first disclosure statement for a special election. Deposit Slips (Rule 4-01(b)(1)) The amendments clarify that the candidate must create a record of each deposit if the candidate's bank or depository does not provide itemized deposit slips. Custodian and Location of Records (Rule 4-03(b)) The amendments clarify certain requirements related to candidate records. Payment by Electronic Funds Transfer (Rule 5-01(u)) The new rule requires all candidates to be paid by electronic funds transfer unless the Board determines to make payment using an alternative method.

8. Statement of Basis and Purpose in City Record Oct. 23, 2008: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2008, published in **The City Record** on April 23, 2007. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record.** Changes to the following rules conform the Board's Rules to recent amendments to the New York City Campaign Finance Act (Administrative Code §§3-701, **et seq.)** (the "Act") contained in Local Laws Nos. 34 and 67 of 2007: 1-04(e) (contributions from LLCs and partnerships), 1-04(h) (multiple contributions from a single source), 5-01(f) (basis for determination of ineligibility to receive public funds), and 5-01(r) (reduction in maximum public funds payable). Amendments to eight additional rules are described below: Definitions (Rule 1-02) The amendment clarifies that expenditures that are not made in furtherance of a political campaign are not included as disbursements in the unspent funds calculation. In addition, the amendment excludes contributions and disbursements received or incurred after the date of the issuance of the final audit report from the participant's unspent funds calculation. Attributing an Expenditure to an Election (Rule 1-08(c)) The new rule clarifies the timing and evidentiary requirements for demonstrating to the Board that a candidate "reasonably anticipated" a primary election. Independent Expenditures (Rule 1-08(f)) The new rule clarifies that one factor in determining whether an expenditure is independent is whether the candidate or the candidate's political committee shared or rented space with or from the person or entity making the expenditure. Records to be Kept (Rule 4-01) The amendments permit the submission of duplicate or modified expenditure records in instances where the original record is missing or incomplete, clarify the recordkeeping requirements for credit card contributions, and describe the information that must be kept for in-kind contributions,

disbursements to vendors, and travel expenses. Assistance to Candidates; Records (Rule 4-04) The amendment clarifies that a campaign's failure to keep or produce records as required by the Board may result in a determination that the campaign made unqualified expenditures or that the campaign must return excess funds to the Board. Pre-election Payments (Rule 5-01(i)) The amendments clarify that a candidate petitioning the Board for reconsideration of a pre-election non-payment determination may submit documentation to the Board that was not submitted prior to a non-payment determination only upon a showing of good cause, and that if the Board is unable to convene within five business days the Board may delegate authority to make a determination regarding such petition to the Chair of the Board or his or her designee. Repaying Public Funds (Rule 5-03(e)) The amendments provide that a participant who received public funds and who has outstanding liabilities after the election may engage in fundraising and that fundraising expenditures incurred and contributions received will be included in the participant's unspent funds calculation unless such expenditures and contributions were incurred or received after the date the participant's final audit report was issued. Determination of Eligibility (Rule 7-03(a)) The amendments provide that the Board may presume that a nonparticipating or limited participating candidate has the ability to self finance when supporting documentation indicates that the candidate has in excess of one-fifth of the applicable expenditure limit in readily available funds and the candidate reasonably can be expected to spend the funds for his or her nomination or election.

48 of 133 DOCUMENTS

Rules of the City of New York

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

52 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-03 Restrictions on Use of Receipts.

(a) **Restriction on use.** In addition to the restriction set forth in Rule 5-03(e)(2) and, except as otherwise provided in subdivision (b):

(1) the candidate may expend, transfer, or use receipts, including receipts resulting from a sale, lease, or other transfer of assets, only to pay expenses incurred in that election; no receipts, including receipts accepted for another election, if any, deposited in a separate account as provided in Rule 2-06(b), may be expended, transferred, or used for any other purpose until any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid;

(2) receipts deposited in an account shall not be used for any purpose other than the election for which that account was established, pursuant to Rule 2-06(b), except as otherwise provided in Rule 2-06(c) for runoff primary election or runoff special election accounts;

(3) after the participant first receives public funds for an election, the principal committee for that election may not make a transfer to a political committee not involved in that election until all unspent campaign funds from that election have been repaid;

(4) after the participant first receives public funds for an election, the principal committee for that election may not make expenditures to pay expenses or debt from a previous election (other than a primary election held in the same calendar year).

(b) **Exception.** After the first January 11 after an election, a candidate involved in that election may expend, transfer, or use receipts accepted for another election, provided that the receipts have been deposited in and are disbursed from a separate account, as provided in §2-06(b). Funds accepted and separately deposited for the previous election may be transferred to this account only after any required repayments to the Fund have been made and any fines or civil penalties assessed pursuant to the Act have been paid. Contributions and loans accepted for the previous election after such election are subject to §§1-04(m) and 1-05(g).

HISTORICAL NOTE

Section amended City Record Oct. 10, 1995 §2, eff. Nov. 9, 1995. [See Note 1]

Subd. (a) amended City Record May 5, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (1) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (3) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (4) added City Record Oct. 18, 1996 §2, eff. Jan. 1, 1997. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Restrictions on Use (R. 1-03)

The use of campaign funds has been restricted to expenditures in the election subject to Program requirements, until the participating candidate makes all required repayments and pays any penalties to the Board. The new rules: (1) recodify requirements restricting the use of funds deposited in separate bank accounts established for different elections; (2) recodify the restriction on making transfers to a committee not involved in the current election, once the participating candidate has received public funds for that election; and (3) clarify that, after January 11, the committee involved in the previous election may use funds received for a new election, if these funds are disbursed from a separate account set up for the new election. This committee could not make transfers from its previous election account to its new election account, however, until the participating candidate makes all required repayments and pays any penalties to the Board.

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Restrictions on Use of Receipts** (R. 1-03(a)(4)) The rules codify Advisory Opinion No. 1993-2 (February 17, 1993), which stated that after receiving public funds for an election, committees may not make payments for expenses or debt from a previous election (other than the primary election held in the same calendar year).

Rules of the City of New York

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

52 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-04 Contributions.

(a) **Receipt.** A monetary contribution is received on the date it is delivered. An in-kind contribution is received on the date the goods or services are received or rendered. Candidates must report the date of receipt of each contribution that is accepted and deposited on disclosure statements filed with the Board.

(b) **Deposit.** All monetary contributions must be accepted and deposited, or rejected and returned to a contributor, within 10 business days after receipt; provided, however, that contributions made in the form of checks received by an authorized committee of a candidate for the office of City Council more than one year before the first covered election for which such candidate is seeking nomination or election may be accepted and deposited, or rejected and returned to a contributor, within 20 business days after receipt. All contributions that are accepted and deposited are subject to the Act's contribution limits and prohibitions and must be reported to the Board. If a candidate returns a contribution after its deposit, the return must be reported to the Board.

(c) **Returning receipts.** (1) **Excess and prohibited contributions.** When a candidate knows or has reason to know that he or she has accepted a contribution, contributions, or aggregate contributions from a single source in excess of the applicable contribution limit, including a contribution or contributions from a contributor having business dealings with the city, or from a source prohibited by the Act or the Charter, the candidate shall promptly return the excess portion or prohibited contribution, as the case may be, by bank check or certified check made out to the contributor; provided, however, that in the case of a contribution from a contributor having business dealings with the city in excess of the applicable limitation set forth in §3-703(1-a) of the Code, the candidate shall return the excess portion of such contribution within 20 days of receipt of notice from the Board that the contribution exceeds such limitation. Alternatively, if return of the contribution to the contributor is impracticable, the candidate may pay to the

Fund an amount equal to the amount of the prohibited contribution or the excess portion, as the case may be. Remedial actions taken pursuant to this rule will not, however, preclude imposition of a penalty under the Act; provided, however, that no violation shall issue and no penalty shall be imposed where the excess portion of a contribution from a contributor having business dealings with the city is postmarked or delivered within 20 days of receipt of notification from the Board. The Board shall provide such notification to the candidate within 20 days of the reporting of the contribution, or, in the case of a contribution reported during the six weeks preceding the candidate's next covered election, the Board shall provide such notification within 3 business days; provided, however, that if such twentieth day is a Saturday, Sunday, or legal holiday, notification by the Board by 5 p.m. on the next business day shall be considered timely. If the candidate demonstrates to the Board, within 20 days of receipt of such notice, that the contributor identified by the Board as having business dealings with the city has applied to the Mayor's Office of Contract Services or the City Clerk for removal from the doing business database and that such application is pending, the candidate may retain contribution(s) received from such contributor until the Board notifies the candidate that the Mayor's Office of Contract Services or the City Clerk has denied the application for removal, in which case the candidate shall have 20 days from receipt of such second notice to return the excess portion of the contribution(s). Contributions from contributors who have applied for removal from the doing business database shall not be considered matchable contributions unless and until the contributor is removed from the doing business database by the Mayor's Office of Contract Services or the City Clerk. A candidate may not accept any contributions in excess of the applicable contribution limits or from sources prohibited by the Act or the Charter.

(2) **Restrictions on return.** Because participants must repay to the Board unspent campaign funds after an election, participants receiving public funds must accept and deposit all monetary receipts received for an election. A participant may not reject or return any contributions received before the first January 12 after the election once he or she has received public funds, except if the contribution: (i) exceeds the contribution limit, including the limit applicable to contributors having business dealings with the city, (ii) is otherwise illegal, (iii) is returned because of the particular source involved, or (iv) was deposited in a separate account pursuant to Rule 2-06(c) for a runoff election that is not held.

(d) **Contributions from political committees.**

(1) Pursuant to §3-703(1)(k) of the Code, a participant may not accept a contribution from a political committee, unless the political committee has registered with the Board pursuant to §3-707 of the Code for the period that includes the participant's next covered election or so registers within ten days of receipt of the contribution. The registration shall be submitted in such form and manner as shall be determined by the Board and shall include such information as may be required by the Board, including:

(i) the name and address of the committee, and the name, address, and employer of the chairperson, treasurer, and liaison of the committee;

(ii) an indication whether the committee is a political action committee, a candidate committee (and if so, identification of the candidate(s) supported by the committee), or another kind of political committee;

(iii) identification of the governmental agency or agencies with which the committee files its financial disclosure statements;

(iv) an indication whether the committee makes monetary contributions, in-kind contributions, and/or independent expenditures, and the name, address and employer of each person with the authority to determine the candidates for whom the committee makes contributions and/or independent expenditures; and

(v) an indication whether the committee accepts contributions from corporations, limited liability companies, or partnerships and undertakes not to use funds from such entities for contributions to participants.

(2) The registration shall remain in effect through the January 11 following the next regularly scheduled citywide

election, unless there has been a material change in the information included in the registration. In the event of a material change, an amendment to the registration shall be filed in order to keep the registration in effect. The Board shall establish a procedure for renewing a previous registration for the next election cycle.

(3) It is the responsibility of the participant to determine whether a contribution from a political committee may be accepted. Participants have the burden to check the cumulative list of registered political committees, published by the Board on a daily basis on its Web site, to ensure that each political committee contribution accepted is from a political committee that registered with the Board previously or within ten days after the acceptance of the contribution. The participant has the burden of demonstrating why a contribution from a political committee that had not registered in a timely manner has been retained.

(e) **Corporations, limited liability companies, and partnerships.** Candidates may not accept, directly, indirectly, or by transfer, contributions, loans, guarantees or other security for a loan from a corporation, limited liability company, or partnership, including a limited liability partnership or professional corporation. This prohibition does not apply to loans made in the regular course of business, regardless of the lender's form of business entity; but does prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership. This prohibition does not apply to contributions by political committees that are corporations, limited liability companies, or partnerships.

(f) **Attributing a contribution to an election.** A contribution is presumed to be accepted for the first election in which the participant, limited participant, or non-participant is a candidate following the day that it is received, except:

(1) as otherwise provided in §§1-04(c)(2), 1-04(m), and 1-07;

(2) in the case of a State or local election, contributions received before the first January 12 after an election will also be presumed to be accepted for that election; and

(3) in the case of a federal election contributions received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under federal law and regulations.

(g) **In-kind contributions.** (1) **As expenditures.** An in-kind contribution to a candidate is also an expenditure made by the candidate. The date an in-kind contribution is received is also the date of its expenditure. If a debt, other than a loan, incurred by a candidate is forgiven, the act of forgiving is an in-kind contribution to but not an expenditure by the candidate.

(2) **Valuation.** The candidate shall use a reasonable estimate of fair market value in determining the monetary value of an in-kind contribution and shall maintain a receipt or other written record supporting the valuation. "Fair market value" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time the goods are received. "Fair market value" for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(3) **Goods and services provided at a price below fair market value.** If goods or services are provided at less than fair market value, the amount of the resulting in-kind contribution is the difference between the fair market value of the goods or services at the time the goods or services are received and the amount charged to the candidate.

(4) **Extensions of credit.**

(i) **Generally.** A creditor who extends credit to a candidate for a period beyond 90 days, has made a contribution equal in value to the credit extended, unless the creditor has made a commercially reasonable attempt to collect the debt.

(ii) **Corporate, limited liability company, and partnership vendors.** Notwithstanding subparagraph (i), if a

candidate demonstrates that a creditor that is a corporation, limited liability company, or partnership did not intend to make a contribution, the extension of credit will not result by itself in the candidate being deemed to have accepted a contribution from a corporation, limited liability company, or partnership, as prohibited by law.

(iii) **Loans.** This paragraph does not apply to loans.

(5) **Debts forgiven.** A debt owed by a candidate which is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable manner.

(6) **Commercially reasonable treatment of debts.** The Board will consider as evidence of commercially reasonable treatment that:

(i) all commercially reasonable efforts have been taken to satisfy the outstanding debt; and

(ii) the creditor has pursued its remedies in the same manner as that employed by creditors of other debtors, including the institution of lawsuits.

(7) **Failure to report liability.** Notwithstanding any implication of paragraph (4) to the contrary, a candidate's failure to report an outstanding liability in a contemporaneous manner is a violation of §3-703(6) of the Code. Such a liability will be deemed an in-kind contribution.

(h) **Multiple contributions from a single source.** If a candidate accepts more than one contribution from a single source, the contributions shall be totaled to determine the candidate's compliance with the applicable contribution limit. A "single source" includes any person, persons in combination, or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled, including every political committee established, maintained, or controlled by the same person, persons in combination, or entity. If a candidate accepts multiple contributions from a single source consisting of at least one contribution from a person having business dealings with the city and one or more contributions from an entity established, maintained, or controlled by that person, the applicable contribution limit shall be the limit applicable to persons having business dealings with the city pursuant to §3-703(1-a) of the Code.

(1) **General factors.** Factors for determining whether a person, persons in combination, or an entity establishes, maintains, or controls another entity include, but are not limited to:

(i) whether the person or entity makes decisions or establishes policy for the other entity, including determinations of the recipients of its contributions and the purposes of its expenditures;

(ii) whether the person or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the other entity;

(iii) whether contributions made by the person or entity and the other entity reflect a similar pattern; and

(iv) whether the person or entity knows of and has acquiesced in public representations by the other entity that it is acting on its behalf or under its direction.

(2) **Labor organizations.** Notwithstanding paragraph (1), different labor organizations shall not be considered to be a single source for the purpose of compliance with the applicable contribution limit if the candidate demonstrates that the contributors satisfy the four criteria below:

(i) the labor organizations do not share a majority of members of their governing boards;

(ii) the labor organizations do not share a majority of the officers of their governing boards;

(iii) the labor organizations maintain separate accounts with different signatories; and

(iv) the labor organizations make contributions from separate accounts.

(3) It is the responsibility of the candidate to determine whether a contribution exceeds the applicable contribution limit. To ensure that the candidate does not accept a contribution exceeding the applicable limit, the candidate must review the relationship between affiliated contributors before the candidate accepts and deposits their contributions or rejects and returns the contributions under Rule 1-04(b) and (c). The candidate has the burden of demonstrating why the candidate has retained an over-the-limit contribution from contributors who or which constitute a single source.

(i) Reserved.

(j) **Earmarked contributions.** If a candidate accepts from a political committee a contribution that had been given to the committee by a contributor who limits the political committee's choice or directs the selection of the recipient, the contribution shall be considered to be from both the original contributor and from the political committee. This rule does not apply to political committees acting solely as intermediaries and not exercising any discretion over the selection of the ultimate recipient, or to political committees making contributions from funds that have not been earmarked by the contributors. Nothing in this subdivision shall be construed to modify the requirements of New York Election Law §14-120.

(k) **Joint contributions.**

(1) Except as otherwise provided for in subdivisions (i) or (j), no contribution shall be considered to be made by more than one person or entity, unless the check or other monetary instrument representing the contribution includes the signature of each person making the contribution (or authorized person in the case of an entity making a contribution).

(2) If a check or other monetary instrument representing a joint contribution does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

(l) **Tickets for fund-raising events.** The entire amount paid to attend a fund-raising event and the entire amount paid as the purchase price for a fund-raising item sold by a candidate are contributions.

(m) **Post-election contributions.** Contributions accepted after an election may be used to pay liabilities incurred in that election subject to the applicable contribution limit and prohibitions, only if deposited in and disbursed from an account established and maintained for that election, as provided in §2-06(b).

(n) **Solicitation of contributions for elections not subject to the Act.** If a candidate makes a solicitation for a contribution for an election not subject to the requirements of the Act, the solicitation must specify that the contribution is being solicited for an election that is not subject to the requirements of the Act.

(o) **Court-ordered rerun elections.** Candidates may not accept additional contributions permitted for a court-ordered rerun election pursuant to §3-703(1)(f) of the Code before the canvass of returns in, or conduct of, the preceding election is contested in a court of competent jurisdiction. If a rerun election is ordered by a court but subsequently cancelled, a candidate who would have been on the ballot has the burden of demonstrating that any portion of contributions in excess of the limit applicable under §3-703(1)(f) of the Code may be reasonably attributed to expenses incurred for the rerun election before its cancellation.

(p) **Joint fundraising; endorsements.**

(1) If a candidate makes expenditures in connection with, or otherwise cooperates in, raising contributions for any other candidate or political committee:

(i) the expenditures incurred and in-kind contributions received in connection with such fundraising, including in

the form of endorsements, shall be allocated in accordance with Rule 1-08(h); and

(ii) if any of the contributions so raised is:

(A) in an amount that exceeds the amount of the contribution limit applicable to the candidate under §3-703(1)(f) of the Code (including when aggregated with contributions the candidate receives from the same source); or

(B) from a source that would be prohibited to the candidate by the Act or the Charter; the candidate shall have the burden of demonstrating that the contribution was not used in a manner that directly or indirectly assisted or benefitted the candidate in violation of the applicable limit or prohibition.

This paragraph shall not be construed to prohibit a candidate from making a monetary contribution to any other candidate or political committee, provided, however, that such contributions may result in reduced public funds payments pursuant to §5-01(n).

(2) To ensure compliance with the contribution limits of §3-703(1)(f) of the Code, candidates who run together as a "ticket," and make joint expenditures to raise contributions, shall additionally abide by the requirements of this subdivision.

(i) When paying his or her share of joint expenditures (by direct payment or reimbursement), the payor shall have the burden of demonstrating that the amount disbursed does not derive from contributions that would exceed the other candidate's contribution limit, if those contributions were aggregated with contributions previously received by the other candidate.

(ii) Therefore, no disbursement for joint expenditures shall be made before the candidate is able to account fully for the disbursement with contributions that would not exceed the other candidate's contribution limit, if so aggregated. Failure to make reimbursement within 30 days of the expenditure, however, will result in a deduction in public funds payments otherwise due to the candidate to be reimbursed, pursuant to §5-01(n)(1), and failure to make reimbursement within 90 days will result in treatment of the expenditure as an in-kind contribution to the candidate failing to make reimbursement, pursuant to §1-04(g)(4).

(q) **Anticipated runoff primary or runoff special elections.** A candidate seeking the nomination of a political party or seeking election in a special election may not accept contributions for a runoff primary election or runoff special election, unless the candidate has previously demonstrated to the Board that a runoff election is reasonably anticipated. Runoff election contributions may not be accepted once it is no longer reasonable to anticipate such a runoff election. To the extent permitted by this subdivision, the candidate (and each opposing candidate seeking the same party nomination or seeking election in the same special election, as the case may be) may solicit and accept additional contributions for the anticipated runoff election, up to the amount permitted for the runoff election by §3-703(1)(f) of the Code, under the following conditions:

(1) every runoff election contribution shall be deposited in a separate account and subject to restrictions on use, as provided in Rule 2-06(c);

(2) until a primary or special election is held that results in a runoff election, each solicitation of runoff election contributions shall expressly state that such contributions are being solicited only for a runoff election that may not occur;

(3) no single contribution check shall be accepted in an amount that exceeds the limit applicable for the primary and general election, or special election, under §3-703(1)(f) or (h) of the Code; and

(4) each disclosure statement submitted by the candidate shall include a copy of the most recent bank statement for its runoff election account.

(r) **Contributions by minors.** (1) A participant or non-participant may accept a contribution from a minor child (individual under 18 years of age) only if: (i) the decision to contribute was made knowingly and voluntarily by the minor child; (ii) the funds, goods, or services contributed were owned and controlled exclusively by the minor child, such as income earned by the child, or a bank account opened and maintained exclusively in the child's name; and (iii) the contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed.

(2) Contributions by individuals under 18 years of age shall not be matchable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record May 15, 2008 §2, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (1) amended City Record Feb. 20, 2009 §1, eff. Mar. 22, 2009. [See Note 10]

Subd. (d) added City Record July 20, 1999 §4, eff. Aug. 19, 1999. [See Note 1]

Subd. (d) par (1) amended City Record May 15, 2008 §3, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (1) amended City Record Oct. 26, 2007 §2, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (1) amended City Record Aug. 7, 2002 Part H Subpart 1 §1, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record Oct. 23, 2008 §2, eff. Nov. 22, 2008. [See

T52 §1-02 Note 8]

Subd. (e) amended City Record Oct. 26, 2007 §3, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) par (4) amended City Record Oct. 26, 2007 §4, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (h) amended City Record Oct. 26, 2007 §5, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (h) amended City Record Feb. 18, 2005 eff. Mar. 20, 2005. [See Note 9]

Subd. (h) open par amended City Record Oct. 23, 2008 §3, eff. Nov. 22,

2008. [See T52 §1-02 Note 8]

Subd. (i) repealed City Record Oct. 26, 2007 §6, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (i) amended City Record Feb. 18, 2005 eff. Mar. 20, 2005. [See Note 9]

Subd. (j) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (k) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (l) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (m) amended City Record July 20, 1999 §9, eff. Aug. 19, 1999. [See Note 1]

Subd. (n) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (o) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (p) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (q) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (r) amended (par (2) inadvertently omitted in amendment) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (b) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (c) par (1) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (c) par (1) amended City Record July 20, 1999 §3, eff. Aug. 19, 1999. [See Note 1]

Subd. (c) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 5]

Subd. (c) par (2) amended City Record Oct. 10, 1995 §3, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (2) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) repealed City Record Oct. 10, 1995 §4, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (e) added City Record July 20, 1999 §4, eff. Aug. 19, 1999. [See Note 1]

Subd. (e) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) amended City Record Feb. 29, 2000 §1, eff. Mar. 30, 2000. [See Note 7]

Subd. (f) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (f) par (2) amended City Record Oct. 10, 1995 §5, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (1) amended City Record Oct. 10, 1995 §6, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (4) amended City Record July 20, 1999 §5, eff. Aug. 19, 1999. [See Note 1]

Subd. (g) par (7) added City Record Feb. 29, 2000 §2, eff. Mar. 30, 2000. [See Note 2]

Subd. (g) par (7) repealed City Record Oct. 10, 1995 §7, eff. Nov. 9, 1995. [See T52 §3-02 Note 3]

Subd. (g) par (7) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) amended City Record July 20, 1999 §6, eff. Aug. 19, 1999. [See Note 1]

Subd. (h) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

Subd. (i) amended City Record July 20, 1999 §7, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (i) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) amended City Record July 20, 1999 §8, eff. Aug. 19, 1999. [See T52 1-02 Note 2]

Subd. (j) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (j) amended City Record Sept. 5, 1991 eff. Oct. 5, 1991.

Subd. (m) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (n) became unnumbered par (formerly (1)) City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See Note 6]

Subd. (n) par (2) repealed City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See Note 6]

Subd. (n) par (2) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (o) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (p) added City Record July 20, 1999 §10, eff. Aug. 19, 1999. [See Note 1]

Subd. (p) heading, par (1) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 4]

Subd. (p) par (2) subpar (ii) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Subd. (q) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 8]

Subd. (q) added City Record July 20, 1999 §10, eff. Aug. 19, 1999. [See Note 1]

Subd. (r) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (r) added City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Prohibited Contributions

Under recent amendments to the New York City Campaign Finance Act and the New York City Charter, candidates participating in the voluntary Campaign Finance Program may not accept contributions from corporations. Participating candidates ("participants") also may not accept contributions from political committees unless those committees have registered with the Campaign Finance Board. Charter §1052(a)(12); Administrative Code §§3-703(1)(a); 3-703(1)(k); 3-707.

The following amendments implement these new prohibitions:

· Rules aggregating contributions from corporations and their affiliates are repealed. Sections 1-02; 1-04(h). The repealed rules continue to apply, however, to contributions accepted from corporations before the new prohibitions took effect on October 22, 1998 and January 1, 1999.

· The requirement that over-the-limit contributions be returned promptly also applies to prohibited contributions. Section 1-04(c).

· A new rule provides for political committee registration. Section 1-04(d).

· A new rule clarifies that the new law permits the acceptance of a loan made by a bank in the regular course of business even if the bank is incorporated. Sections 1-04(e); 1-05(c).

· To implement the new prohibitions on corporate contributions, the Board has reconciled the Charter and Administrative Code provisions to permit participants to accept contributions from political committees that are incorporated, provided that the committees have registered with the Board. Section 1-04(e).

· For an extension of credit by a corporation, if a participant shows that a corporate creditor did not intend to make a contribution, the extension of credit will not by itself be deemed a contribution by the corporation. Section 1-04(g)(4).

· Like the contribution limits, the new contribution prohibitions apply to post-election contributions. Section 1-04(m).

· Similarly, the new contribution prohibitions apply to surplus funds from previous elections and to transfers from committees not otherwise involved in elections covered by the Program. Section 1-07(c), codifying Advisory Opinion No. 1999-3 (January 7, 1999).

Fundraising for Multiple Candidates, Anticipated Runoff Primaries, and Different Offices

Beginning on January 1, 2000, if a participating candidate cooperates in raising contributions for another recipient (other than by making monetary contributions):

· the participant will have accepted an in-kind contribution equal to the full cost of the fundraising if the recipient of the contributions makes expenditures benefitting the participant; and

· the participant must demonstrate that contributions raised for the recipient that are over the limit or from a prohibited source were not used in a manner that benefitted the participant.

Section 1-04(p)(1), implementing new Charter §1052(a)(11)(b).

Participants who run together as a "ticket" may make joint expenditures to raise contributions. When a participant pays his or her share, the amount disbursed must not derive from contributors who have given the maximum permitted to the other candidate. The payor must have enough contributions that would not exceed the other candidate's limit to account for his or her disbursement. Section 1-04(p)(2), codifying Advisory Opinion No. 1997-9 (September 10, 1997).

Participants for citywide office may solicit and accept additional contributions for an anticipated runoff primary

election, if they first demonstrate to the Board that a runoff primary is reasonably anticipated. The new rule reiterates these requirements:

· Runoff contributions must be deposited in a separate account and are subject to restrictions on use.

· Until a runoff actually occurs, each solicitation of runoff contributions must expressly state that the contributions are for a runoff that may not occur.

· No single contribution check may be accepted in an amount that exceeds the primary/general election contribution limit.

· Each disclosure statement must include a copy of the most recent runoff bank account statement.

Sections 1-04(q) and 2-06(c), codifying Advisory Opinion No. 1999-1 (January 7, 1999).

New rules also codify how fundraising expenditures will be treated when a candidate is raising funds for two different elections. The full amount of these expenditures would be subject to the City limits and prohibitions, if the first election is covered by the Program. If it is the second election that is covered by the program, these expenditures would be subject to the City limits and prohibitions in the same proportion that the total funds raised for the second election bears to the total funds raised for both elections by the same activity or, alternatively, up to the expense of raising funds for one election that are then used in a different election. Section 1-08(m).

2. Statement of Basis and Purpose in City Record Feb. 29, 2000: **Failure to Report Outstanding Liabilities** The rules would make clear that failure to report an outstanding liability in a contemporaneous manner is a violation of the Campaign Finance Act and an in-kind contribution, and also will not be considered a qualified campaign expenditure. If vendors submit (and participants report) bills in a regular and timely manner, reporting by the date of the bill would satisfy the contemporaneous reporting requirement. If, however, vendors do not submit bills in a regular and timely manner, these rules make clear that participants are obligated to report the liability at the time it is incurred regardless whether a bill has been received. Rules 1-04(g)(7); 1-08(g)(4).

3. Statement of Basis and Purpose in City Record Aug. 7, 2002: Contributions 1. **Deposit of Contributions** (§1-04(b)) The amendment clarifies that contributions accepted and deposited are subject to the Act's corporate contribution ban, unregistered political committee ban, and other prohibitions, as well as the Act's contribution limits. 2. **Return of Prohibited Contributions to the Public Fund** (§1-04(c)(1)) The amendment allows candidates to pay prohibited contributions to the Public Fund when return of the contribution to the contributor is impracticable. Under the current rules, participants may not keep such contributions and must return them to the contributor. However, participants sometimes find themselves unable to return contributions-for example, when they are unable to locate the contributor or when a corporate contributor has gone out of business. Currently, only contributions from unregistered political committees can be paid to the Public Fund, and the amendment would permit candidates to pay other prohibited contributions to the Public Fund. 3. **Treat Limited Liability Company Contributions like Partnership Contributions** (§§1-04(e), (i), (k), 3-03(c)(8)) The amendments treat limited liability company contributions the way partnership contributions currently are treated, **i.e.,** by attributing contributions greater than $2,500 to both the limited liability company and its members. Partnerships and limited liability companies have similar structures and are often treated identically for tax purposes. They also implicate similar concerns of undue organizational influence over elected officials. Additionally, the absence of attribution for limited liability companies permits corporate members of limited liability companies to make contributions, and permits limited liability company members to contribute in excess of the contribution limit, by contributing both through the limited liability company and individually. The amendment also clarifies that professional corporations are included in the corporate contribution ban. During the 2001 elections, many candidates asserted that they were unaware that a contribution from a professional corporation, or "p.c.," was included in the ban on corporate contributions. This amendment does not make any substantive changes to the Rule or the corporate contribution ban, but merely confirms that professional corporations are included in the corporate contribution

ban. 4. **Contributions from Minors** (§1-04(r)) The Board has concluded that contributions from minors (children under the age of 18) require special regulation because it has found that contributions from adults may be misreported in the names of children in order to circumvent the $1,000 limit on matching funds per contribution ($500 for special elections) and the Program's contribution limits. In response, the Board is promulgating a new §1-04(r) to make explicit a participant's responsibility to ensure that contributions from minors do not violate the Act, Rules, or state law. The new rule requires participants to verify that: (1) a contribution reported in the name of a minor was made knowingly and voluntarily by the minor; (2) the funds provided were owned and controlled exclusively by the minor; and (3) the funds do not derive from a gift to the minor that was made for the purpose of funding the minor's contribution.

4. Statement of Basis and Purpose in City Record Jan. 15, 2003: Political Activity (Rules 1-04(p)(1), 1-08(h)) The Board has received comments from the public that the current rules on attributing contributions and expenditures for coordinated political activity are burdensome on candidates. Specifically, participants have indicated that contributions and expenditures attributed to a participant from the communication of their endorsements and other statements of support for other candidates should be limited where the benefit to the participant is limited. The Board has adopted certain amendments to its coordinated political activity rules in an attempt to respond to these concerns. These amendments are intended to make Program requirements in this area less onerous, permit candidates to undertake certain types of routine, limited political activity without significant impact to their campaigns, and ensure that the Program provides guideposts to the treatment of this activity. Current Rule 1-04(p)(1), promulgated pursuant to a New York City Charter §1052(a)(11)(b) requirement to regulate soft money contributions, provides that if a participant is cooperating in raising contributions for another candidate, the participant is presumed to have accepted an in-kind contribution equal to the full cost of the fundraising that was not paid for by the participant. Because of a concern that this rule may not reflect the benefits each participant receives from the fundraising activity, the amendments to Rule 1-04(p)(1) provide that each coordinating participant be deemed to have received in-kind contributions, and to have made expenditures, only commensurate with the benefit to him or her from the fundraising activity. In the past, the Board has not considered the act alone of endorsing a candidate to trigger an in-kind contribution or expenditure. To codify this practice in its rules, the amendments to Rule 1-08(h) confirm that an endorsement alone will not be considered an in-kind contribution from the endorser to the endorsee or an expenditure by the endorsee on behalf of the endorser. The costs of the communication of an endorsement, however, may be considered to be an in-kind contribution and expenditure, which, to the extent that the communication is directed to an audience of the endorser's constituents, should be controlled because of the potential for abuse. The amendments add factors to be considered by the Board in determining whether the endorser received any benefit that is disproportionate to any expenditures made by the endorser for the material or activity. Because such endorsements may be incidental to the overall communication, however, the amendments provide that the Board may determine that the benefit is de minimis to the participant, based upon information it has in its possession, including information presented to the Board by the participant or other individuals or entities. Finally, the amendments to Rule 1-08(h) presume that regular or routine communications-but not special mailings-from a political club to its own membership, signed by a participating candidate who is already a member of the club, will not trigger an in-kind contribution or expenditure to a participant. This exception is limited to political clubs with fewer than 500 members and does not include communications soliciting funds for or otherwise supporting the participant's campaign. The amendments are an attempt to respond to concerns that participants' routine political club communications should not be attributed to the club member's campaign. For other treatment of coordinated political activity, see Campaign Finance Act §3-716 and the Board's Rules, including Rules 1-08(f) and 1-08(h). The amendments are not intended to alter the Program's longstanding treatment of coordinated political activities as in-kind contributions and expenditures. Indeed, disclosure and regulation of coordinated political activity has always been, and will continue to be, subject to review and administrative determinations by the Board. Rather, the amendments are intended to reduce the burdens on candidates by clarifying the manner in which particular activities will be treated and to create a potential exemption for certain incidental activities. This is consistent with the rules of other jurisdictions, which routinely treat coordinated political activity, including the communication of endorsements, as in-kind contributions and expenditures, but which may provide limited exemptions for minor activities.

5. Statement of Basis and Purpose in City Record Oct. 18, 1996: Contributions **Returning Excessive**

Contributions (R. 1-04(c)) The rules require that if any contributions exceeding the limit which have been returned to the contributors are not deposited or cashed within 60 days, the participant may make a voluntary contribution to the New York City Election Campaign Finance Fund.

6. Statement of Basis and Purpose in City Record Nov. 19, 1996: Fundraising Activities **Fundraising for Elections not Subject to the Act** (R. 1-04(n)(2), 3-03(c)(10)) The new rules repeal the rule prohibiting candidates participating in the Campaign Finance Program from soliciting or accepting contributions at a single event both for elections subject and not subject to the Campaign Finance Act. The new rules instead require that participants report in a cover letter submitted with the disclosure statement a list of all contributions reported in that disclosure statement that were accepted at an event at which contributions were solicited or accepted both for elections subject to and not subject to the Act.

7. Statement of Basis and Purpose in City Record Feb. 29, 2000: Technical Changes These amendments also include technical changes, amendments to correct errors and omissions, without substantive change. Rules 1-04(f), 1-08(f)(iii) and (iv), 2-01(e)(3), 3-02(f)(1) and (2), 1-08(g)(2)(xiii), 11-03, and 11-04(b)(2).

8. Statement of Basis and Purpose in City Record May 5, 2003: Contributions 3. **Anticipated Runoff Special Elections** (§1-04(q)) A New York City Charter revision approved by voters in 2002 provides, among other things, that if no candidate in a special election for mayor receives at least 40% of the vote, a runoff special election will held between the top two candidates. Local Law No. 12 of 2003 amended the Act to account for the possibility of a runoff special election for mayor in which a candidate is a participant in the New York City Campaign Finance Program (the "Program"). The amendments to §1-04(q) establish rules for anticipated runoff special election fundraising that conform to the Board's Rules applicable to anticipated runoff primary elections for mayor and other citywide offices. Thus, candidates may not commence fundraising for a runoff special election for mayor until the Board has determined that such an election is reasonably anticipated; contributions accepted for a runoff special election for mayor must be deposited into a separate bank account; until the special election is held, solicitations for runoff election contributions must expressly state that the contributions are solicited only for a runoff election that may not occur; each disclosure statement submitted by a participant shall include a copy of the most recent bank statement for its runoff election account; no single contribution check may be accepted in an amount in excess of applicable contribution limits; and if a runoff special election for mayor is no longer reasonably anticipated, fundraising for that election must cease.

9. Statement of Basis and Purpose in City Record Feb. 18, 2005: The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The amendments effect the following specific changes, take effect thirty days after final publication in **The City Record,** and apply to contributions accepted at any time during the 2005 election cycle, as well as prospectively. Contributions from a Single Source (Rule 1-04(h) and (i)) Pursuant to Rule 1-04(h), contributions from a single source are totaled for the purposes of compliance with the contribution limits. The policy rationale of the rule is to prevent circumvention of the contribution limits by ensuring that all entities are treated as a single source when a common decisionmaker determines whether to contribute on behalf of the entities making the contributions. A **rebuttable** presumption is articulated for limited liability companies, partnerships (together "limited liability entities"), and certain labor organizations. Concerns of undue influence attendant on contributions from limited liability entities and labor organizations made the single-source rule a salient issue in the 2003 election cycle (as contributions from corporations were in past years, before corporate contributions were banned). These contributions represented the majority of all organizational contributions to Campaign Finance Program participants.[1]1 In the course of its audits, the Board has acquired experience raising questions about affiliated entities with campaigns and has corresponded with campaigns and entities about potential single-source rule violations. The Board's experience has revealed that a number of contribution limit violations have been comprised of contributions from affiliated labor organizations and limited liability entities constituting single sources. For example in the 2003 election cycle, several campaigns accepted over-the-limit contributions from the political committees of two affiliated unions (a parent and subordinate union) that designated the same person as the decisionmaking authority for contributing to city candidates, and from a district level union and local unions whose decisionmaking was controlled by the district level union. The Board believes the single-source rule will be improved with clarification to describe in

greater detail the types of entities that will be presumed to be single sources (in the absence of evidence demonstrating the contrary) and to provide clearer guidance to candidates about the factors relevant to overcoming the rebuttable presumption. The new rule supplements the factors currently contained in the rule and provides a **rebuttable** presumption that certain limited liability entities and labor organizations will, in the absence of evidence demonstrating the contrary, be treated as single sources for the purposes of compliance with the contribution limits. For entities not covered by these more detailed considerations, the general factors in Rule 1-04(h)(1) will continue to apply. The rule amendments arise out of a long-standing Board practice that has been in effect for all organizational contributions to ensure that single sources do not make over-the-limit contributions. In the audit process, the Board routinely questions campaigns about apparent contribution limit violations stemming from the contributions of affiliated and apparently affiliated entities, whether by limited liability entities, labor organizations, or, in the past, corporations. As always, the burden rests on the campaign to show compliance by demonstrating that affiliated entities do not constitute a single source for purposes of the contribution limits. Campaigns have responded to the questions in the audit process either by not contesting the affiliation or, in some cases, with evidence that the entities do not constitute a single source for purposes of the contribution limits. Before the law was amended to prohibit candidates from accepting corporate contributions,[2]2 the Board rules contained similar provisions that subjected contributions from corporate parents, affiliates, subsidiaries, and controlling persons to a single contribution limit. **See** Board Rules, Appendix B, **Former Rules on Affiliated Contributions.** Under the former rules, if an entity or individual owned, held, or could vote a class of stock representing over fifty percent of a corporation's voting power, the Board considered this relationship to be conclusive evidence of control, and thus considered the corporation to be a single source with the controlling entity or individual. Where corporate ownership was less clear, however, the Board merely presumed that affiliated corporations were subject to common control. Acknowledging a range in levels of control among these affiliated entities, the Board permitted candidates the opportunity to rebut the presumption. The former rules on affiliated corporations included a list of general factors, substantially similar to the current Rule 1-04(h)(1), to assist candidates with the rebuttal in cases where ownership was less clear. The Board's practice, now largely irrelevant to corporate contributions, underlies the rule amendments which share the same objective as the former rules on affiliated corporations-to ensure that all single sources, in this case limited liability entities and labor organizations, are similarly treated. Although the rule amendments arise out of Board practice, they provide more detailed guidance than did the former corporate rules to candidates concerning the specific kinds of documentation that may be offered to rebut the presumption. They also provide more detailed guidance than was provided in the proposed rules as adopted by the Board for public comment. In response to public comments on the proposed rules, the rules now provide a detailed list of documentation germane to limited liability entities and labor organizations in particular. In demonstrating that affiliated limited liability entities and labor organizations are distinct sources, the campaign may provide documentation of as many items on the list, and others not on the list, as it believes may be relevant to the contributions at issue, and the Board will look at the evidence as a whole to determine whether the campaign has shown that one entity does not control the decisions of another entity with respect to campaign contributions, and thus has overcome the presumption. There is no requirement that a candidate provide documentation relating to all items or any particular item on the list. The rule improves the candidate's ability to comply with and the Board's ability to enforce the single source rule, because the rule explicitly confirms the kinds of considerations that will enable candidates to meet the burden of demonstrating that entities are distinct sources. This burden lies, as it always has, with the candidate, the party best situated to acquire the information from the entities supporting the candidate with contributions. The candidate always has the burden to demonstrate compliance with the applicable contribution limits, but the former Rule 1-04(h) gave no detailed description of the precise factors which the candidate should rely upon to demonstrate to the Board that one affiliated contributor did not "establish, maintain, or control" another affiliated union or limited liability entity contributor. **See** former Rule 1-04(h). The information needed to evaluate this is more readily in the hands of the candidate and contributor than in the hands of the Board. Paragraph (2) of the rule clarifies that a labor organization is presumed (in the absence of evidence demonstrating the contrary) to have established, maintained, or controlled all of its subordinate organizations and that contributions from a labor organization and its subordinate organizations therefore would be considered to issue from a single source for purposes of compliance with the contribution limits. The Board looked to federal campaign finance law for guidance in constructing the rule. In 1976, Congress made a finding that large corporations and unions were circumventing the contribution limits of the Federal Election Campaign Finance Act, 2 U.S.C.A. §431 **et seq.,**

("FECA"), by creating hundreds of new political action committees through their subsidiaries and locals.[3]3 To stem the vertical proliferation of contributors, Congress amended FECA to include a single-source provision, §441a(a)(5).[4]4 The Board's rule adapts the language of the single-source regulations of the Federal Election Commission ("FEC"), enacted pursuant to the FECA's single source provision. **See** 11 C.F.R. §§100.5(g) and 110.3(a). Where the FEC enacted a **per se** rule, however, the amended Board rule merely enacts a **rebuttable presumption** that the following are single sources: a union and its political committees; a parent union, such as an international/national union and all of its regional, state, intrastate, and local unions; and an organization of international/national unions, such as the AFL-CIO, and all of its regional, state, intrastate, and local bodies.[5]5 Thus, under the rule, the Board will presume (in the absence of evidence demonstrating the contrary) that contributions from different New York City local unions that share a parent union constitute a single source. (As is the case for other entities controlled by a common decisionmaker, there need not be a contribution from a parent union in order for the Board to aggregate contributions from its subordinate unions. **See also** 11 C.F.R. §§100.5(g) and 110.3(a). The Board may aggregate contributions from subordinate entities controlled by a common decisionmaker regardless whether the common decisionmaker contributes.) Parent unions often exercise significant control, both formally and informally, over the decisions, activities, and structure of their subordinate unions. The legislative history of FECA, the opinions of the federal courts, union constitutions, the Board's experience acquired through its audit process, and the experience of union members, support this conclusion. In its discussion of FECA's aggregation provision, a controlling Circuit Court decision concurred with the assessment of Congress and the FEC that a typical parent union exercises considerable control over its locals. **See Sailors' Union,** 828 F.2d at 506-9 (citing constitution of the United Steelworkers' union as support for position that traditional international unions exercise "highly intrusive authority" over their locals). The siphoning of autonomy from local unions to parent unions has been criticized by union members and labor advocates.[6]6 Because there is a range in the levels of control parent unions exercise over their subordinate unions, however, the Board is adopting a rebuttable presumption and not a **per se** rule. While the Board's experience supports a rebuttable presumption that a parent union and its subordinate unions are a single source, it does not support codifying a rebuttable presumption that an **organization** of unions, like a federation, and its affiliated member unions are a single source. The Board recognizes that whereas parent unions may exercise substantial control over their subordinate unions, organizations of international and national unions tend to function as umbrella groups with little authority over the decisions of their loosely affiliated member unions. (The Board does presume that subordinate umbrella groups constitute a single source with their parent umbrella groups. For instance, the national AFL-CIO and the New York State AFL-CIO would be covered by the rule, but a member union of the AFL-CIO would fall outside of the rule with respect to its relationship with the national AFL-CIO or New York State AFL-CIO.) The amendments thus parallel the treatment federal campaign finance law affords umbrella groups. **See** FECA, 2 U.S.C.A. §441a(a)(5); 11 C.F.R. §§100.5(g) and 110.3(a); **Sailors' Union,** 828 F.2d 502; **see also** 54 FR 34,098-01, 34,099 (Aug. 17, 1989). The rule amendments do not change the Board's authority to continue to aggregate contributions from an umbrella group and its affiliated unions when appropriate, on a case-by-case basis, by applying the factors in Rule 1-04(h)(1). The Board received comments following the adoption of the proposed rebuttable presumption for public comment. Several labor unions commented that they were not controlled by their parent unions and made decisions about political contributions independently of their parent unions. As noted **supra,** the Board recognizes this range in the relationships among affiliated labor organizations and therefore is not adopting a **per se** rule, but rather a rebuttable presumption. The rebuttable presumption is a desirable means of effectuating the Act's contribution limits, because (a) the Board has encountered numerous cases in which affiliated labor organizations did not contribute to candidates independently, and (b) candidates, who always have the burden to demonstrate compliance with the Act, are in a far better position that the Board to ascertain the independence of their contributors. Codifying Advisory Opinion No. 2001-6 (June 14, 2001), paragraph (3) of the rule provides that separate partnerships and limited liability companies that have a common general partner or a common managing member are presumed to be a single source for purposes of compliance with the contribution limits. (Where appropriate, such as when a limited liability company's managing member is also the general partner of a partnership, the rebuttable presumption aggregates contributions from the limited liability company and the partnership.) Consistent with the Advisory Opinion, registered limited liability partnerships established pursuant to Article l8-B of the New York State Partnership Law, which are not governed in the same manner as other partnerships, are not covered by the rebuttable presumption. Paragraph (4) of Rule 1-04(h) makes it clear that candidates will be able to obtain documentation from contributors to overcome the

rebuttable presumption of affiliation. The Board will provide notice to a candidate if he or she accepts an over-the-limit contribution from entities presumed to be a single-source, and the candidate will then have the opportunity to show that the entities are distinct sources.[7]7 As a practical matter, candidates will be well advised to take additional steps when they accept contributions to verify that contributions from limited liability entities and labor organizations do not violate the applicable contribution limits. It is anticipated that the 2005 Campaign Finance Handbook would be supplemented to provide examples of documentation candidates can request from contributors and questions candidates can ask contributors to help rebut the presumption. Applying Rules 1-04(h) and (i) to the entire 2005 election cycle will not create a departure from Board practice, because, as emphasized above, the rule amendments are based upon existing Board practice. Candidates who have accepted contributions from limited liability entities and labor organizations during the 2005 election cycle preceding the effective date of this rule have time to review their contributions to verify whether the rebuttable presumptions apply, and if so, to return the over-the-limit portion of the contributions or to collect documentation to overcome the rebuttable presumption. The Board has adopted minor changes to Rules 1-04(h) and (i) to conform them to legislation passed by the City Council on December 15, 2004.

10. Statement of Basis and Purpose in City Record Feb. 20, 2009: I. Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2009, published in **The City Record** on April 14, 2008. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**. Returning receipts (§1-04(c)(1)) Candidates must return contributions in excess of the "doing business" contribution limits within 20 days of notification from the Board that the contributor is considered to be doing business with the City. **See** Admin. Code §3-703(1-b). The new rule clarifies that a candidate may retain apparent "doing business" contributions if the candidate demonstrates, within 20 days of notification from the Board, that an application for removal from the doing business database is pending before the Mayor's Office of Contract Services (MOCS) or the City Clerk. The candidate may retain the contribution until notified by the Board that MOCS or the City Clerk had denied the application for removal, in which case the campaign has 20 days following such second notification to return the contribution. Contributions retained pursuant to the new rule are not eligible to be matched with public funds unless and until the Board notifies the campaign that the contributor was removed from the doing business database. Spending public funds (§1-08(g)) The amendment clarifies that public funds may not be used for services that are never received, including legal services paid in advance pursuant to a retainer agreement to the extent such advance payments exceed the value of the services ultimately rendered by the attorney or law firm. Filer Registration; Certification (§§1-11 and 2-01) The amendments clarify that candidates must amend their Filer Registration or Certification forms if any of the information required to be listed on those forms changes. Candidates must submit the amended form by the deadline for their next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement for an election, within 30 days of the change. Candidates need not amend the forms after the issuance of the Final Audit Report unless they have outstanding liabilities from the covered election, including penalties or public funds repayments owed to the Board. Filing dates (§3-02(b)) The amendment provides that if the first semi-annual disclosure statement following the date of a special election is due less than 30 days after the 27 day post-election statement, the last disclosure statement required to be filed by candidates in a special election is the second semi-annual statement after the date of the special election. Credit Card Contributions (§4-01(b)(6)) The amendment clarifies that candidates must maintain copies of their unique merchant account agreements. Record Retention (§4-03) The amendment requires candidates to notify the Board of any changes to the contact information for the custodian of their records by the deadline for their next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement for an election, within 30 days of the change. This requirement remains in effect for six years following the date of the election to which the campaign records pertain. Petitions for review of payment determinations (§§(5-01(i), 5-02(a)) The amendments provide that a participant may only petition the Board for review of public funds determinations prior to the election, unless the participant submits information and/or documentation that was not available to the Board previously and is material to the payment or non-payment determination, and shows good cause for the previous failure to provide such information and/or documentation. As a result of a change to the Campaign Finance Act added by Local Law 34 of 2007, participants now have the opportunity to challenge public funds determinations prior to the issuance of the final audit report in a hearing

before the Board or before an independent hearing officer. Deductions from payments (§5-01(n)) The amendment clarifies that funds deposited into, and disbursements made from a segregated bank account established and maintained in compliance with §5-01(n) for the purpose of repaying debt from a previous election will not be considered raised or spent for the current covered election for purposes of the participant's expenditure limit and unspent campaign funds calculations.

FOOTNOTES

1

[Footnote 1]: [1] Although the single-source restriction is not in itself concerned with aggregates, it is of interest that approximately 13% of all contributions to Program participants and 50-55% of all organizational contributions in the 2003 election cycle were from labor organizations and political committees established by labor organizations. Political committees established by labor organizations represented approximately 60% of all political committee contributions in the 2003 election cycle. (Approximately 30% of political committee contributions in the 2003 election cycle were from candidate committees, subject to other regulations under the Act and Rules.) Contributions from limited liability entities and political committees established by limited liability entities represented approximately 5-6% of contributions in the 2003 election cycle and approximately 20% of all organizational contributions.

2

[Footnote 2]: [2] New York City Charter §1052(a)(12); New York City Administrative Code §3-703(1)(l).

3

[Footnote 3]: [3] See FEC v. Sailors' Union of the Pacific Political Fund, 828 F.2d 502, 504 (9th Cir. 1987) (citing 122 Cong. Rec. 6710-23 (1976)).

4

[Footnote 4]: [4] See id. at 504-5 (citing H.R. Conf. Rep. No. 94-1057 (1976) reprinted in 1976 U.S.C.C.A.N. 929, 946, 973).

5

[Footnote 5]: [5] Following the Board's adoption of the rebuttable presumption for public comment, Bob Master, political director of the Communication Workers of America District 1, commented that the proposed Board rule looked similar to the federal rule, and "[w]e've lived comfortably under the federal rule. . . ." Dan Janison, Limiting union spending, Newsday, October 22, 2004 at A17.

7

[Footnote 7]: [7] It remains the candidate's responsibility to make this inquiry in the first instance, whether or not the candidate is questioned by the Board in the audit process.

Rules of the City of New York

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

52 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-05 Loans.

(a) **Repayment by next election.** A loan, must be repaid by the date of the next election, or else the loan, guarantee, or other security for a loan will be considered a contribution subject to the Act's contribution limits.

(b) **Loans not made in regular course of business.** A loan not made in the regular course of the lender's business shall be deemed, to the extent not repaid to the lender by the date of the next election, a contribution by the lender.

(c) **Loans made in regular course of business.** A loan made in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the next election, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collaterizing, or otherwise providing security for the loan. Neither the Act nor the Charter prohibits receipt of a loan made in the regular course of the lender's business, regardless whether the lender is a corporation, limited liability company, or partnership.

(d) **Third party repays loan.** If any portion of a loan is repaid by a person or entity other than the participant or non-participant receiving the loan, the portion thus repaid shall be a contribution by that person or entity.

(e) [Reserved]

(f) [Reserved]

(g) **Post-election loans.** Loans received after an election that are used for that election are considered contributions for that election, and must be deposited in and disbursed from an account established and maintained for that election,

as provided in §2-06(b), except that a loan made by the candidate after the election for the purpose of (i) paying penalties pursuant to the Act or (ii) making required repayments to the Fund is not subject to the contribution limit.

(h) **Attributing a loan to an election.** A loan is presumed to be accepted for the first election in which the participant or non-participant is a candidate following the day that the loan is received, except:

(1) as otherwise provided in §1-05(g);

(2) in the case of a State or local election, loans received before the first January 12 after an election will also be presumed to be accepted for that election; and

(3) in the case of a Federal election, loans received before the first January 1 after the election will also be presumed to be accepted for that election, except as may otherwise be provided under Federal law and regulations.

(i) **Deposit.** All loans must be accepted and deposited, or rejected and returned, within 10 business days after receipt.

(j) **Loans forgiven.** Any portion of a loan that is forgiven is a monetary contribution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) amended City Record Oct. 26, 2007 §7, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record Oct. 26, 2007 §7, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record July 20, 1999 §11, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) repealed City Record Oct. 10, 1995 §8, eff. Nov. 9, 1995. [See Note 2]

Subd. (f) repealed City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (g) amended City Record Oct. 18, 1996 §6, eff. Jan. 1, 1997. [See Note 3]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (i) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) added City Record Oct. 10, 1995 §10, eff. Nov. 9, 1995. [See Note 2]

DERIVATION

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) par (2) amended City Record Oct. 10, 1995 §9, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

Loans (§1-05(f))

Under New York State Election Law §14-114(6), New York City Administrative Code §3-702(8), and §1-05(a), a loan to a campaign that is not repaid by the date of the next election is considered to be a contribution. If a loan that remained unpaid on the date of the election were not considered a contribution, the loan would provide the lender with a vehicle to supply campaign funds far in excess of the amount he or she could give by way of contribution, which would circumvent the contribution limits of the Campaign Finance Program.

In Advisory Opinion No. 1989-42, the Board created a narrow exception to the law that allowed participants receiving matchable contributions shortly before the election to take out a "bridge loan" in anticipation of a post-election public funds payment, provided that the participant used the post-election public funds to repay the loan. In 1991, the bridge loan exception was codified in §1-05(f).

This amendment will eliminate the bridge loan exception by deleting §1-05(f). The bridge loan exception is inconsistent with State Election Law §14-114(6), under which a loan not repaid by the date of the election is deemed to be a contribution. See **In Re Cook v. Unger,** No. 5576-02 (Sup. Ct., Albany Cty. Oct. 29, 2002). Changes in the Program's matching formula and schedule for disclosure statements have effectively eliminated the justification for bridge loans insofar as there is no longer any pre-election filing submitted to the Board that cannot be paid upon by the date of the election for administrative reasons. The Board will, however, evaluate on a case-by-case basis, as part of its post-election audit of every campaign, the circumstances surrounding any loan, including the timing of the loan, whether it has been repaid, and whether in fact public funds are due to a campaign, in order to determine the appropriate penalties, if any, for over-the-limit contribution violations resulting from loans outstanding on the date of the election.

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Loans** (R. 1-05(e), (j); 3-03(d); 3-04(d)) The rules eliminate the reporting of outstanding principal from the loan disclosure requirements. The rules also make clear that loans forgiven are not matchable contributions under the Campaign Finance Act. The presumption that excessive loans are knowing violations of the contribution limit if not paid back by the day of the election is repealed. Loans forgiven are treated as monetary contributions, not in-kind contributions in conformance with State Board of Elections disclosure requirements.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Loans **Post-election Loans** (R. 1-05(g)) Loans received after an election that are used for that election are considered contributions. Under the rules, two limited exceptions are permitted: when a candidate makes a loan from his or her own personal funds after the election, for the purpose of paying penalties imposed by the Board or returning public funds due to the Board, the post-election loan would not be considered a contribution.

Rules of the City of New York

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

52 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-06 Special Elections.

If a special election to fill a vacancy is declared, the Board may provide for the following special requirements and procedures for candidates in the special election, after considering the date of the election and any other relevant factors:

(a) a standard by which contributions, loans, and/or expenditures are presumed to be accepted or made for the special election, notwithstanding §§1-04(f), l-05(h), and 1-08(c)(1);

(b) a standard for determining the total amount of surplus funds from previous elections and

(c) such other requirements and procedures as the Board may deem necessary to implement the provisions of the Act in the special election fully and effectively.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (b) amended City Record Oct. 10, 1995 §11, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record Oct. 10, 1995 §11, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Rules of the City of New York

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

52 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-07 Funds Originally Received for Other Elections.

(a) **Use.** Funds originally received by a committee not otherwise involved in a covered election may be used in a covered election subject to the requirements of this rule, but may not be claimed as matchable contributions for that election.

(b) **Surplus funds.** The Board deems the cash balance reported in the candidate's first semi-annual form or Board disclosure statement at the beginning of the first reporting period for an election to be the total amount of surplus funds the committee had from a previous election; except that the amount deemed to be surplus funds may be reduced by the following:

(1) the total amount of debts and obligations outstanding at the beginning of the reporting period;

(2) the total amount subsequently transferred to a political committee that is not involved in a covered election; and

(3) if the candidate was a participant in the previous election, the total amount of public funds subsequently repaid.

When requested by the Board, candidates shall provide additional information regarding totals and transactions reported in State forms or Board disclosure statements.

(c) **Contribution limit; prohibited contributions.** Candidates have the burden of demonstrating that surplus funds and transfers of funds from committees not otherwise involved in the covered election do not derive from: (1) contributions in excess of the Act's contribution limits, including contributions that would exceed the Act's contribution

limits when aggregated with other contributions accepted from the same source; or (2) contributions from sources prohibited by the Act or the Charter. In addition, participants have the burden of demonstrating that funds transferred from a committee, other than another principal committee of the same candidate, derive solely from contributions for which records demonstrating the contributors' intent to designate the contributions for the covered election have been submitted and maintained as required pursuant to Rules 3-03(c)(2) and 4-01(b)(8), respectively.

For purposes of enforcing the contribution limit and contribution prohibitions, the Board shall attribute surplus funds and such transfers to the last monetary contributions, loans, and other receipts received by: (1) the candidate on or before the date of the cash balance described in subdivision (b) in the case of surplus funds; or (2) the transferor committee before making the transfer. The candidate shall either promptly return the portion of any contribution that exceeds the Act's contribution limit or violates a prohibition of the Act or the Charter, as provided in §1-04(c)(1), or deposit the excess portion or amount of the prohibited contribution, as the case may be, into a separate account not to be used in a covered election.

(d) **Related expenditures.** Expenditures made in connection with raising or administering funds transferred from a committee not otherwise involved in a covered election are subject to the expenditure limits of the Act and shall be reported as provided in §3-03(c)(2). As provided for in §1-08(o), the participant shall have the burden of demonstrating that any expenditures incurred by the transferor committee are not subject to the expenditure limits of the Act.

HISTORICAL NOTE

Section amended (individually by subdivision) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) open par amended City Record May 15, 2008 §4, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section amended City Record Oct. 10, 1995 §12, eff. Nov. 9, 1995. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (c) amended City Record July 20, 1999 §12, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]. Certain internal designations made by the Law Department per Charter §1045(b).

Subd. (g) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Contributions and Other Receipts

Funds Originally Received for Other Elections (R. 1-07; 3-03(c)(2), (3))

The rules repeal the requirement that disclosure statements contain an attribution of surplus funds from previous elections and of transfers received from committees not involved in the current election. Instead, the rules consolidate the treatment of these funds as "funds originally received for other elections" and set forth the attribution principles as those that the Board will continue to apply when determining whether the use of the funds would violate the contribution limit in the current election. Participating candidates have the burden of showing that expenditures related to raising and administering these funds are not subject to the Act's expenditure limits.

Rules of the City of New York

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

52 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-08 Expenditures.

(a) **Expenditures.** Expenditures include all disbursements made, liabilities incurred, and contributions received by a candidate, except disbursements to return contributions, repay loans, return public funds, and transfers. Some expenditures are subject to the expenditure limits of the Act and other expenditures are exempt.

(b) **Making an expenditure.** As provided and described in §3-706 (1) and (2) of the Code, an expenditure for goods or services is made when the goods or services are received, used, or rendered, regardless when payment is made. Expenditures for goods or services received, used, or rendered in more than one year shall be attributed in a reasonable manner to the expenditure limits of §3-706(1) or (2) of the Code, as appropriate.

(c) **Attributing an expenditure to an election.** (1) An expenditure is presumed to be made for the first election (in which the participant, limited participant or non-participant is a candidate) following the day it is made, except: (i) in the case of a State or local election, expenditures made before the first January 12 after an election will also be presumed to be made for that election; (ii) in the case of a federal election, expenditures made before the first January 1 after the election will also be presumed to be made for that election, except as may otherwise be provided under federal law and regulations.

(2) (i) If there is no contested primary election for an office, expenditures made by a participant or limited participant seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(ii) If there is a contested or write-in primary election in any party for an office, every participant or limited participant seeking that office, regardless whether the participant or limited participant is in the primary election, may

make expenditures subject to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after the date of the primary election.

(iii) Notwithstanding subparagraph (i), if a participant or limited participant demonstrates to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election in any party for the office the participant or limited participant seeks, the participant or limited participant may attribute expenditures made before and during that period to the primary election expenditure limit of §3-706(1) of the Code, provided the participant or limited participant files the three pre-primary and 10 day post-primary election disclosure statements and daily disclosures pursuant to Rule 3-02(c), (d), and (e) in a timely manner. In this case, the general election expenditure limit will first apply after that period. In order to demonstrate to the Board that for a period preceding the primary election the participant or limited participant had reasonably anticipated a primary election, the participant or limited participant must file a petition, consisting of an affidavit with supporting documentation, with the Board no later than ten business days following the date the last remaining candidate other than the participant or limited participant was finally disqualified from the ballot as set forth in Rule 5-02(b). The affidavit must specify the period of time during which it was reasonable to anticipate that a primary election would be held, identify the prospective candidate(s), and provide a factual basis for the participant's or limited participant's belief that a primary election was reasonably anticipated during the specified period of time. The supporting documentation must demonstrate that the prospective candidate(s) engaged in activities that would lead a reasonable person to believe that such candidate(s) would participate in the primary election. Such activities may include: (i) raising or spending funds for the primary election; (ii) authorizing a political committee with the Board of Elections for the primary election; (iii) filing a filer registration and/or certification form with the Board; (iv) engaging in petitioning activity, including the filing of petitions with the Board of Elections; (v) producing and/or distributing campaign literature; and (vi) campaigning for office or otherwise publicly declaring an intent to participate in the primary election.

(iv) Once it is determined by petition litigation or otherwise that no primary election will be held for nomination to an office, expenditures made by participants or limited participant seeking that office are subject to the general election expenditure limit of §3-706(1) of the Code.

(v) Expenditures made before the primary election by a participant or limited participant who is a candidate in a contested primary election are subject to the primary election expenditure limits of §3-706(1) of the Code, regardless whether the participant or limited participant has also received the nomination of another party without a primary election.

(3) Candidates have the burden of demonstrating that expenditures made by committees reported not to be involved in the election in which the candidate is currently a participant or limited participant were not made in connection with such election. Failure to meet this burden will result in the application of all Program requirements to these committees for such election.

(4) **Special elections.** An expenditure is presumed to be subject to the special election expenditure limit on and after the date a special election was first reasonably anticipated, as determined by the Board. Participants or limited participants may present evidence to the Board demonstrating the date a special election was first reasonably anticipated.

(d) **Expenditure limits.** (1) All expenditures made by a participant or limited participant for the purpose of promoting or facilitating his or her nomination or election, including expenditures made for the purpose of promoting or facilitating the defeat of an opponent or prospective opponent, are subject to the expenditure limit applicable under the Act. All expenditures made by the participant or limited participant and his or her principal committee shall be totaled to determine the participant's or limited participant's compliance with the applicable expenditure limit. Expenditures made after the last election in an election year in which the participant or limited participant is a candidate, or a special

election, are not subject to the expenditure limits for that election.

(2) A participant or limited participant is permitted to make expenditures in excess of the limits of §3-706(2) of the Code, but not in excess of the limits of §3-706(1) of the Code. The limits of §3-706(2) are the minimum amounts that a participant or limited participant must spend during the three calendar years before the election year in order to spend the total aggregate amount the Act and these Rules permit during those years and the time period encompassed by the expenditure limit that first applies to the candidate in the election year, pursuant to §3-706(1) of the Code.

(3) All expenditures made by a participant or limited participant for the purpose of advocating a vote for or against a proposal on the ballot in an election that is also a covered election, regardless whether the expenditures were also made to promote or facilitate the participant's nomination or election, shall be subject to the expenditure limits applicable in such covered election.

(4) The following shall not be subject to the expenditure limits: (i) expenses made for the purpose of bringing or responding to any action, proceeding, claim or suit before any court or arbitrator or administrative agency to determine a candidate's or political committee's compliance with the requirements of this chapter, including eligibility for public funds payments, or pursuant to or with respect to election law or other law or regulation governing candidate or political committee activity or ballot status; (ii) expenses to challenge or defend the validity of petitions of designation or nomination or certificates of nomination, acceptance, authorization, declination or substitution, and expenses related to the canvassing or re-canvassing of election results; and (iii) expenses related to the post-election audit.

(e) Reserved.

(f) **Independent expenditures.** (1) Factors for determining whether an expenditure is independent include, but are not limited to:

(i) whether the person, political committee, or other entity making the expenditure is also an agent of a candidate;

(ii) whether the treasurer of, or other person authorized to accept receipts or make expenditures for, the person, political committee, or other entity making the expenditure is also an agent of a candidate;

(iii) whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person, political committee, or other entity making the expenditure;

(iv) whether the person, political committee, or other entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons, political committees, or other entities as those which have established, financed, maintained, or controlled a political committee authorized by the candidate;

(v) whether the person, political committee, or other entity making the expenditure and the candidates have each retained, consulted, or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate's communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate; and

(vi) whether the candidate, any agent of the candidate, or any political committee authorized by the candidate shares or rents space for a campaign-related purpose with or from the person, political committee, or other entity making the expenditure.

(2) Financing the dissemination, distribution, or republication of any broadcast or any written, graphic, or other form of campaign materials prepared by a candidate is a contribution to, and an expenditure by, the candidate, unless this activity was not in any way undertaken, authorized, requested, suggested, fostered, or otherwise cooperated in by the candidate.

(3) An expenditure for the purpose of promoting or facilitating the nomination or election of a candidate, which is determined not to be an independent expenditure, is a contribution to, and an expenditure by, the candidate.

(4) (i) Communication between, or common agents shared by, parties and their nominees will not require a conclusion that all spending by the party's constituted committees and party committees in an election is an in-kind contribution to the nominee. The following expenditures made by party committees or constituted committees are not considered in-kind contributions to a candidate unless it is demonstrated that the candidate in some way cooperated in the expenditure and that the expenditure was intended to benefit that candidate:

(A) materials or activities that promote the party, or oppose another party, by name, platform, principles, history, theme, slogans, issues, or philosophy, without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(B) materials or activities in connection with candidates and elections not subject to the requirements of the Act.

(C) training, compensating, or providing materials for poll watchers appointed by the party pursuant to New York Election Law §8-500.

(D) promoting party enrollment or voter turnout without reference to particular candidates in an upcoming election subject to Program requirements, including research, polling, recruitment of party employees and volunteers, and development and maintenance of voter and contributor lists.

(E) raising funds for the party without reference to particular candidates in an upcoming election subject to the requirements of the Act.

(F) mailing of absentee ballot applications in a special or general election in which an office not subject to the requirements of the Act is on the ballot.

(ii) The Board may require a candidate to demonstrate in any proceeding before the Board that any of the following expenditures that are made by a party committee or constituted committee are not in-kind contributions to the candidate:

(A) expenditures for materials or activity that include an electioneering message about a clearly identified candidate for a covered election.

(B) expenditures for advertisements, broadcasting, mailings, or electronic media for a candidate or against his or her opponent, including a home page on the Internet.

(C) expenditures for which the candidate has, without making public disclosure of an outstanding liability in a timely manner, promised or made reimbursement or other payment to the party committee or constituted committee. These expenditures will be considered in-kind contributions during the time preceding the reimbursement or other payment by the candidate.

(5) If candidates announce they are running together as a "ticket" for which they have chosen to join together in a broad spectrum of activities to promote each other's election, the Board will presume that expenditures made by one candidate's campaign for materials or activities that clearly identify the other candidate are in-kind contributions to the second candidate. The following factors would increase the burden a candidate would have in overcoming this presumption: (i) the campaigns have staff, consultants, office space, or telephone lines in common; (ii) other in-kind contributions, expenditure refunds, advances, or joint expenditures have been made between these campaigns. If the expenditures are in-kind contributions, the expenditures are subject to the apportionment requirements of Rule 1-08(h).

(g) **Spending public funds.**

(1) Public funds may be used only for expenditures by a participant's principal committee to further the participant's nomination or election either in a special election to fill a vacancy or during the calendar year in which the election in which the candidate is a participant is held.

(2) Public funds may not be used for:

(i) an expenditure for any purpose other than the furtherance of the participant's nomination or election;

(ii) an expenditure not incurred during the calendar year of the election;

(iii) an expenditure in violation of any law;

(iv) payments made to the participant or a spouse, domestic partner, child, grandchild, parent, grandparent, brother, or sister of the participant or spouse or domestic partner of such child, grandchild, parent, grandparent, brother, or sister, or to a business entity in which the participant or any such person has a 10 percent or greater ownership interest;

(v) payments in excess of the fair market value of services, materials, facilities, or other things of value received;

(vi)(A) any expenditure made after the participant has been finally disqualified or had his or her petitions finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made (1) as otherwise permitted pursuant to §3-709(7) of the Code, or (2) for a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the candidate seeks election for the same office;

(B) any expenditure made after the only remaining opponent of the participant has been finally disqualified or had his or her petitions declared invalid by the New York City Board of Elections or a court of competent jurisdiction, except that such expenditures may be made for a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the participant seeks election for the same office;

(C) any other election, if the public funds were originally received for a special election to fill a vacancy.

(vii) payments in cash;

(viii) any contribution, transfer, or loan made to another candidate or political committee;

(ix) gifts, except brochures, buttons, signs and other printed campaign material;

(x) any expenditures to challenge or defend the validity of petitions of designation, or nomination, or certificates of nomination, acceptance, authorization, declination, or substitution, and expenses related to the canvassing of election results;

(xi) any expenditure for which records required by §4-01 are not maintained or obtained by the participant;

(xii) any expenditure that is not itemized in a disclosure statement submitted pursuant to §3-03;

(xiii) any payment that is not made or reimbursed from an account disclosed by the participant pursuant to §1-11(d) or 2-01(a);

(xiv) reimbursement for advances, except in the case of individual purchases in excess of $250;

(xv) expenditures made in connection with any action, claim or suit before any court or arbitrator;

(xvi) expenditures made primarily for the purpose of expressly advocating a vote for or against a ballot proposal, other than expenditures made also to further the participating candidate's nomination for election or election;

(xvii) payment of any penalty or fine imposed pursuant to federal, state or local law; or

(xviii) payments for services that were never received, including payments for legal services pursuant to a retainer agreement to the extent payments for such services exceed the value of the services rendered.

(3) It is presumed that the following bills for goods and services are not qualified campaign expenditures:

(i) bills for an election that are first reported in a disclosure statement submitted later than the 10 day or 27 day post-election disclosure statement applicable to that election; and

(ii) bills first reported in an amendment to or resubmission of a disclosure statement that is made after the last election in an election year in which the participant is a candidate, or after a special election.

(4) A liability that is not reported in a contemporaneous manner is a violation of §3-703(6) of the Code and will not be considered a qualified campaign expenditure.

(h) **Joint expenditures; endorsements.**

(1) In accordance with the Act, nothing in these Rules shall be construed to restrict a candidate from authorizing expenditures for joint campaign materials and other joint campaign activities, including fundraising and campaign communications such as mailings and telephone and other communications, if the benefit the candidate derives from the material or activity is proportionally equivalent to the candidate's expenditures for the material or activity. To the extent a candidate derives a disproportionate benefit, the candidate is considered to have received a contribution and made an expenditure. Among the factors the Board will consider in determining whether the benefit is "proportionally equivalent," are:

(i) the focus of the material or activity,

(ii) the geographic distribution or location of the material or activity;

(iii) the subject matter of the communication;

(iv) the references to the candidate or the candidate's appearances therein;

(v) the relative prominence of a candidate's references or appearances in the communication, including the size and location of references to the candidate and any photographs of the candidate;

(vi) the timing of the communication; and

(vii) other circumstances surrounding the communication. The amount spent by the candidate for these purposes is subject to the expenditure limit applicable under the Act, unless it is otherwise exempt.

(2) Notwithstanding the provisions of paragraph (1) above, the following activities in support of another candidates by a participant, limited participant or non-participant shall not be considered contributions to or expenditures by such participant, limited participant or non-participant, except to the extent that such activities are paid for by the participant, limited participant or non-participant for a covered election:

(i) the act alone of endorsing or appearing with another candidate for public office, party nomination or party position;

(ii) the insubstantial communication of such endorsement or appearance described in subparagraph (i), such as where the candidate's name is one of several names appearing on the communication and is of equivalent prominence as the other names;

(iii) fundraising assistance to another candidate in the form of written communications that do not promote the participant, limited participant or non-participant such as the appearance of the participant's, limited participant's or non-participant's, name or signature on a letter soliciting funds for another candidate or the appearance of the participant's, limited participant's or non-participant's name on fundraising material where the participant's, limited participant's or non-participant's name appears alone or with other names and is of equivalent prominence as the other names; and

(iv) a typical communication by a political club to its members, which includes the name of a candidate, provided that the candidate is already a member of the political club, the political club has fewer than 500 members, and the communication does not solicit funds on behalf of or otherwise promote the participant's, limited participant's or non-participant's campaign for a covered election.

(3)(i) The Board may, in its discretion, determine that the benefit to a candidate from references to or appearances of that candidate contained in another candidate's communication, such as campaign literature or an automated telephone call, is of de minimis value to the candidate based on the factors listed in paragraph (1) or other factors.

(ii) Candidates and other individuals or entities may present information to the Board establishing such a de minimis benefit pursuant to §7-01, or in such other manner as the Board may determine, or the candidate may present such information during the post-election audit process.

(i) **Expenditures by check.** No candidate may expend an amount in excess of $100 except by check drawn on a reported depository and signed by the candidate or person authorized to sign checks by the candidate.

(j) Reserved.

(k) **Volunteer services.** After receiving public funds for an election, participants shall not pay volunteers for services already performed on a voluntary basis for that election, but may hire them as employees or retain them as consultants for future services.

(l) **Expenditure limit compliance.** (1) Participants and limited participants shall monitor whether their total expenditures exceed the limit of §3-706(1) of the Code or, if applicable, the limit of §3-706(3)(a)(i) of the Code. The amount of the expenditure limit that applies to the participant or limited participant in the calendar year of the election, pursuant to §3-706(1) of the Code, shall be reduced by the amount by which the initial expenditure limit pursuant to §3-706(2) of the Code is exceeded. Participants and limited participants have the burden of demonstrating that expenditures are exempt pursuant to §3-706(4) of the Code. A participant or limited participant shall meet this burden by maintaining contemporaneous, detailed records that demonstrate that each individual expenditure claimed as exempt is exempt in accordance with §3-706(4) of the Code and submitting such documentation as required under paragraph (3) below.

(2) Reserved.

(3) If a participant or limited participant fails to submit documentation sufficient to substantiate an exempt expenditure claim, the expenditure subject to such claim shall not be considered exempt from the expenditure limit applicable to the participant or limited participant under §3-706(1) or §3-706(3)(a)(i) of the Code.

(4) For purposes of this subdivision, in determining whether a participant's or limited participant's total expenditures exceed the amount of the limit applicable under §3-706(1) or §3-706(3)(a)(i) of the Code, the following expenditures shall be excluded: (i) expenditures made in the first three years of the election cycle, to the extent such expenditures do not exceed the limit applicable under §3-706(2) of the Code; and (ii) in the case of the general election expenditure limit, expenditures made not later than the closing date of the 10 day post-primary election disclosure statement, provided that the participant or limited participant was subject to a primary election expenditure limit.

(5) Notwithstanding anything otherwise provided for in this subdivision, the reimbursement of an advance shall not be considered an exempt expenditure.

(m) **Fundraising for more than one election.** When a candidate makes expenditures for a single event or other activity to raise funds for more than one office sought, and the first election that will be held is:

(1) a covered election, the full amount of such expenditures is subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter.

(2) not a covered election, a portion of such expenditures will be subject to the expenditure limits, the contribution limits, and the contribution prohibitions of the Act and the Charter in such proportion as the total funds raised in connection with such event or other fundraising activity for the second election bears to the total such funds raised for both elections by such event or activity. Alternatively, the candidate may demonstrate to the Board that a different apportionment is applicable in accordance with §1-07(d).

(n) **Fundraising solicitations.** Each written solicitation of contributions by or on behalf of a candidate, whether in paper or electronic format, shall include the following statement, written in a conspicuous and clearly recognizable manner: "State law prohibits making a contribution in someone else's name, reimbursing someone for a contribution made in your name, being reimbursed for a contribution made in your name, or claiming to have made a contribution when a loan is made."

(o) **Expenditure limit compliance for transfers.** In the case of a transfer of funds from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate, the participant must allocate to the transferred contributions any expenditures incurred by the transferor committee during the covered election cycle in connection with raising or administering transferred contributions, and any expenditures incurred by the transferor committee prior to the covered election cycle in connection with raising the transferred contributions. In such a case, the participant has the burden of demonstrating, for the purpose of compliance with the expenditure limits of the Act, what expenditures incurred by the transferor committee were not made in connection with raising or administering the transferred contributions. At the Board's request, the participant shall provide documentation related to any such expenditures, including copies of Federal forms or disclosure statements filed with the New York State or City Board of Elections on behalf of the transferor committee. Expenditures will be applied towards the expenditure limit in effect at the time of the transfer; provided, however, that in the case of transfers made prior to the covered election cycle, expenditures will be applied towards the expenditure limits of §3-706(2).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005 with internal reference provision eff.

Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par 1 amended City Record Oct. 23, 2008 §4, eff. Nov. 22, 2008.

[See T52 §1-02 Note 8]

Subd. (c) par (2) subpars (i), (ii), (iii) amended City Record Oct. 23, 2008 §4, eff. Nov. 22, 2008. [See

T52 §1-02 Note 8]

Subd. (d) amended City Record Oct. 26, 2007 §8, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005 with internal reference provision eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (e) repealed City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (f) amended City Record Oct. 23, 2008 §5, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 11 and T52 §1-01 Note 1]

Subd. (g) par (2) subpar (xiv) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xv) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpars (xvi), (xvii) amended City Record Feb. 20, 2009 §2, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (g) par (2) subpar (xvi) amended City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xvii) added City Record Oct. 26, 2007 §9, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) par (2) subpar (xviii) added City Record Feb. 20, 2009 §2, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (j) repealed City Record Feb. 11, 2005 eff. Jan. 1, 2006. [See T52 §1-01 Note 1]

Subd. (k) added City Record Oct. 10, 1995 §17, eff. Nov. 9, 1995. [See Note 7]

Subd. (l) amended City Record Oct. 26, 2007 §10, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (l) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 12 and T52 §1-01 Note 1]

Subd. (m) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (n) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (o) amended City Record June 18, 2009 §1, eff. July 18, 2009. [See Note 13]

Subd. (o) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (a) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (b) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (1) subpar (i) amended City Record Oct. 10, 1995 §13, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (2) subpar (ii) amended City Record Oct. 10, 1995 §14, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (2) subpar (iii) amended City Record Oct. 10, 1995 §14, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (3) added City Record Oct. 10, 1995 §15, eff. Nov. 9, 1995. [See Note 6]

Subd. (c) par (4) added City Record Oct. 10, 1995 §15, eff. Nov. 9, 1995. [See Note 6]

Subd. (d) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (d) par (2) amended City Record July 20, 1999 §13, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (d) par (2) subpar (ii) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (d) par (2) subpar (iii) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (d) par (2) subpar (iv) added City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (e) par (5) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (6) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) par (1) subpars (iii), (iv) amended City Record Feb. 29, 2000 §3, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (1) subpar (v) added City Record Feb. 29, 2000 §3, eff. Mar. 30, 2000. [See Note 1]

Subd. (f) par (4) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (f) par (4) subpar (ii) clause (C) added City Record Feb. 29, 2000 §4, eff. Mar. 30, 2000. [See Note 1]

Subd. (f) par (5) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (g) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (g) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (g) par (1) amended City Record July 20, 1999 §14, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpar (iv) amended City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See T52 §1-02 Note 3]

Subd. (g) par (2) subpars (vi), (vii), (x) amended City Record July 20, 1999 §15, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpar (x) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (g) par (2) subpar (x) amended City Record July 20, 1999 §15, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (g) par (2) subpars (xi), (xii) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (g) par (2) subpar (xiii) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (g) par (2) subpar (xiii) amended City Record Feb. 29, 2000 §5, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (g) par (2) subpar (xiii) amended City Record Oct. 10, 1995 §16, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (g) par (2) subpar (xiii) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (g) par (2) subpar (xiv) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (g) par (2) subpar (xv) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01

Note 7]

Subd. (g) par (3) added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 8]

Subd. (g) par (4) added City Record Feb. 29, 2000 §6, eff. Mar. 30, 2000. [See T52 §1-04 Note 2]

Subd. (h) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (h) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See T52 §1-04 Note 4]

Subd. (i) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (j) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (j) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (j) par (1) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (j) par (2) subpar (ii) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (j) par (3) amended City Record Sept. 29, 1997 eff. 46 days after approval of City Council. [See Note 9]

Subd. (j) par (4) repealed City Record July 20, 1999 §16, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (l) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (l) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 3]

Subd. (l) amended City Record July 20, 1999 §17, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (l) added City Record Oct. 10, 1995 §17, eff. Nov. 9, 1995. [See Note 6]

Subd. (l) par (1) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (l) par (2) subpar (i) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2] Note subpar (i) bracketed out of law in 2007 amendment.

Subd. (l) par (6) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 10] Note par (6) became par (5) in 2007 amendment.

Subd. (m) added City Record July 20, 1999 §18, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (n) added City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

In-Kind Contributions

An amendment to the Charter adopted by the electorate on November 3, 1998 requires the Board to adopt rules to attribute expenditures that indirectly assist or benefit a candidate participating in the voluntary system of campaign finance reform, **i.e.,** soft money, as in-kind contributions to such candidate. Charter §1052(a)(11)(b). The following amendments address this issue:

· An additional factor for determining whether an expenditure is independent would be whether the participant (defined in the Rule 1-02 to include "the candidate and every political committee authorized by the candidate, the treasurer of each such committee, and any agent of the candidate") and the person making the expenditure have each retained, consulted or otherwise have been in communication with the same third party or parties, if the participant knew or should have known that the participant's communication or relationship to the third party or parties would inform or result in expenditures to benefit the participant. Rule 1-08(f)(1)(v).

· If a party committee or constituted committee of the party nominating the participant ("party") makes expenditures which the participant has promised to repay or has reimbursed without the timely disclosure of an outstanding liability to the party, the participant may be required to demonstrate that these expenditures are not in-kind contributions. If the candidate fails to make the required demonstration, these expenditures would be considered in-kind contributions for the period before the reimbursement. Rule 1-08(f)(4)(ii)(C).

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Expenditures **Required Documentation for Exempt Expenditures** (Rule 1-08(l)(1) and (2)(i)) The amendment clarifies the current requirements for demonstrating that an expenditure is exempt in accordance with §3-306(4) of the New York City Administrative Code. The rule eliminates the provision under the current exempt expenditure section directing that a participant may request an advisory opinion regarding whether an expenditure is exempt under the Act, because, pursuant to Board Rule 7-04, a participant may request an advisory opinion regarding any matter, including whether an expenditure is exempt.

3. Statement of Basis and Purpose in City Record Nov. 19, 2002: **Documentation and Reporting of Exempt Expenditures** (§1-08(l)) This amendment is intended to simplify candidate reporting and Board auditing of exempt expenditures. Prior to the amendment, in addition to maintaining the books and records required generally for all expenditures, candidates seeking to establish exempt expenditures had to do so either by maintaining substantiating records that demonstrated each individual exempt expenditure claim or by establishing a methodology to account for exempt expenditures. The amendment replaces the methodology provisions with an option to limit aggregate exempt expenditures to an amount not greater than 5% of the applicable expenditure limit. Candidates choosing the latter option will be required to maintain only the records generally required for all expenditures, as long as the expenditures claimed as exempt fall into acceptable categories. This 5% limit is based on Board staff's review of the aggregate average exempt expenditure claims made by those 2001 participants who made exempt expenditure claims, adjusting for participants who claimed more than 50% in exempt expenditures. It is not designed to enable all candidates with claims for exempt expenditures to choose the 5% option, but rather to enable the average candidate to do so. The rule is intended to maintain the requirement that those candidates who anticipate having a high percentage of exempt expenditures must substantiate that amount through detailed documentation. Participants choosing to limit their exempt claims to 5% of the applicable expenditure limit nonetheless will be required to restrict their exempt claims to those expenditures which are permitted as exempt under the Act. The Board will not accept exempt claims which appear from the nature of the underlying expenditures not to be permitted under the Act. For example, exempt claims for television advertisements, fundraising, food, or entertainment will not be permitted, but an exempt claim for overhead or computers may be permitted. Other questionable exempt claims, such as for print ads or campaign mailings, would not be permitted, unless the participant were able to establish a valid exempt purpose for the expense through documentation. Participants choosing to substantiate all exempt claims through detailed documentation will have to submit these records to the Board upon request. The records required will be the same records required of participants who did not choose the methodology option under the prior version of the rule. The Board staff will be providing more detailed guidance and examples of what kinds of expenditures may be counted under the 5% option. The Board will

also provide examples of documentation needed by those not choosing the 5% option to establish exempt expenditure claims. The Board intends to provide this guidance and these examples in the Campaign Finance Handbook. The Board anticipates that the rule will simplify candidate recordkeeping and reporting and Board auditing of exempt expenditures. This amendment also provides specific treatment for ballot petition litigation expenses. These expenditures can often equal more than 5% of a participant's expenditure limit and are difficult to predict. Thus, to treat ballot litigation expenses in the same manner as other exempt claims would effectively force participants to choose the documentation option described above. Participants who chose to limit exempt claims to 5% of their expenditure limit would run the risk of violating that limit solely through any ballot petition legal fees. Therefore, the amendment provides that exempt claims for ballot petition litigation expenditures must be established through documentation, but that participants may still choose either the 5% limit or the detailed documentation of exempt expenditures. Ballot petition litigation expenses would not count against the 5% documentation limit.

4. Statement of Basis and Purpose in City Record Nov. 19, 2002: **Accounting and Auditing** 1. **Contribution Cards** (§§1-08(n), 4-01(b)(3),(7), 1-09(c), 3-04, 5-01(d)(18)) Section 4-01(b)(3) requires participants to maintain contribution cards for cash and money order contributions. The Board has found this contribution card requirement very useful in its audit review for invalid or fraudulent matchable contribution claims. Indeed, during the 2001 elections, Board staff uncovered multiple instances of improper or even apparently fraudulent matchable contribution claims through review of the contribution cards submitted by participants with their matching claims. These amendments require the affirmation included in cash and money order contribution cards to include a statement that State law requires that contributions be in the name of the contributor and be from the contributor's own funds. They further require participants to include a similar statement in all written contribution solicitation materials, including electronic solicitations made over the Internet. The amendments arose out of conversations and experience working with local prosecutors. The Board believes that many contributors may not know that it is illegal to reimburse any individual for a contribution or to receive reimbursement for a contribution. The proposed amendments had provided that the signed affirmation include language referring to the New York State Penal Law, and had extended the contribution card requirement to include check and credit card contributions. However, the Board received comments that including such language could deter people from making contributions, and that extending the contribution card requirement to check and credit card contributions would be burdensome. The final text of these amendments is intended to strike a balance between the concerns of participants and the concerns of the Board regarding improper or fraudulent contributions. The new rules require contribution cards for cash and money order contributions to include a statement that "I understand that State law requires that a contribution be in my name and be from my own funds," and require candidates, in their materials soliciting contributions, to remind potential contributors of these requirements. This notification has now become routine, for example, in federal campaigns, even where no public funds are available to match private contributions. Similarly, federal law requires that candidates' materials soliciting contributions note that contributions are not tax-deductible under federal law. These rules will become effective for contributions received after January 11, 2003.

5. Statement of Basis and Purpose in City Record Jan. 15, 2003: **Use of Public Funds** (Rule1-08(g)) It has been longstanding Board policy to treat reimbursements of advances as non-qualified expenditures. Advances are purchases not made by the campaign committee, and not with campaign funds. The amendment to Rule 1-08(g) confirms the Board's current practice that reimbursements of advances are not qualified and thus that public funds may not be used for their reimbursement. The amendment is not intended to prevent participants from making advance reimbursements, but such reimbursements cannot be paid for with public funds. The amendment is also not intended to reach arms-length sub-contracted services. **Expenditure Limits** (Rule 1-08(j)) Current Rule 1-08(j) provides an expenditure limit applicable to candidates for the office of City Council member of $24,000 for the 24-month period constituted by the third and fourth years prior to the year of an election. When this limit was adopted by the Board in 1997, the Board stated that it was "providing for expenditure limits for expenditures made in the first two calendar years of the four year election cycle for election to the office of City Council." The Board did not intend to apply such a large expenditure limit in two-year election cycles, when participants also have expenditure limits for the prior election, and it is not in keeping with the intent of the expenditure limits provisions of the Campaign Finance Act. Accordingly, the amendments

subject all expenditures made by candidates for the office of City Council member during the 24-month period prior to the year before the election year in a two-year election cycle to an expenditure limit of $3,000, except to the extent that, pursuant to Rule 1-08(c), any such expenditures are presumed to be made in furtherance of another election. Thus, for example, expenditures made prior to January 12, 2004 by participants who were also candidates in the 2003 elections will be presumed to be made in furtherance of the 2003 election.

6. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Expenditure Limits** (R. 1-08(c), (l); 3-02(f)(1)) The rules make clear that participating candidates have the burden of showing that committees making expenditures in the current election cycle are not involved in the covered election. Failure to carry this burden will result in the committee being subject to all Program requirements. In addition, the three pre- and one post-primary disclosure statements, and daily disclosures in the week before the primary election, are no longer required on behalf of any candidate not in a primary election, unless the candidate seeks to attribute expenditures to a primary election spending limit. The rules also codify that a participant may claim a primary election expenditure limit for expenditures incurred in reasonable anticipation of a parimary in another party, following Advisory Opinion No. 1993-3 (June 9, 1993), and that a special election spending limit begins when the special election is first reasonably anticipated, following Advisory Opinions Nos. 1992-3 (December 16, 1992) and 1994-1 (February 23, 1994). The rules also establish a new procedure for monitoring expenditure limit compliance. Participating candidates may demonstrate that their expenditure exemption claims, including those claimed to be for compliance costs, and supporting documentation, conform with a methodology that may be prescribed by the Board (under development). Alternatively, they may request advisory opinions on whether particular spending is exempt and what documentation is sufficient to substantiate the particular exemption claim. Under the new rules, when a participating candidate's total spending exceeds the amount of the spending limit, or when otherwise requested by the Board, the candidate's disclosure statements must also include documentation substantiating sufficient exempt expenditure claims to demonstrate compliance with the expenditure limit. Failure to make a sufficient exempt expenditures submission would give rise to a presumption that the candidate has violated the spending limit.

7. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Voluntary Services** (R. 1-08(k)) The rules make clear that, after receiving public funds, participating candidates may not compensate volunteers for previous campaign services. The candidate is not, however, restricted from hiring or retaining former volunteers and paying them for future services.

8. Statement of Basis and Purpose in City Record Oct. 18, 1996: Expenditures **Expenditures Exempt from Limits** (R. 1-08(d)(1), (e)) The rules repeal the exempt expenditure section in its entirety, because the exemptions are already enumerated in the Act. **See** Admin. Code §3-706(4) (compliance costs and petition litigation); Admin. Code §3-702(8) (independent expenditures); Admin. Code §3-712 (expenditures for non-covered elections). The repeal of R. 1-08(e) does not override certain previous advisory opinions interpreting the Act's exemptions, specifically Advisory Opinion No. 1991-3 (June 11, 1991) (circulating petitions). Advisory Opinion No. 1991-7 (October 9, 1991) (challenging election results), and Advisory Opinion No. 1996-1 (April 4, 1996) (compliance costs). Because the exemptions for expenditures under Administrative Code §§3-706(4) and 3-712 are limited, the new rules reflect the Board's conclusion that its prior statutory interpretation finding exemptions for constituent services (R. 1-08(e)(5)) and ballot proposal advocacy (Advisory Opinion No. 1989-53) (October 26, 1989) is not warranted under current law. The effect of the rules is to eliminate such exemptions prospectively. The exemptions for transition, inaugural, and wind-up costs are subsumed within an amendment to R. 1-08(d)(1) that states that spending for post-election goods and services are post-election expenditures and not subject to the expenditure limits. **Expenditures by Political Parties and Candidates Running as a Ticket** (R. 1-08(f)(4), (5)) The rules create a framework for evaluating political party spending on behalf of candidates who are participating in the Campaign Finance Program. The rules modify the conclusions reached by the Board in Advisory Opinion No. 1991-5 (August 8, 1991) and are based on recommendations made by the Board in a January 1995 report to the Mayor and City Council, **Party Favors** and public comments the Board received on that report. The Board also reviewed a recent U.S. Supreme Court decision, **Colorado Republican Federal Campaign Committee v. Federal Election Commission,** No. 95-489, 1996 WL 345766 (U.S. June 26, 1996)

that addressed political party spending in the context of federal campaign finance law. These rules are grounded in the following considerations: (1) the First Amendment safeguards the speech and association rights of political parties; (2) the Campaign Finance Board is not authorized to regulate the content or objectives of political party spending; and (3) the stake that parties and their nominees share in a general election campaign makes it extremely unlikely that either the party or its nominees would readily accept or adhere to a standard that forbids communication between them or the sharing of common agents. Under New York State Election Law, a political party committee may give an unlimited amount to a candidate. Election Law §14-114(9)(2), (10). Party spending on behalf of a candidate is not subject to the per candidate limits applicable to other contributors. Election Law §14-114(3). Moreover, contributors may now give $69,900 per year to each political party committee. **See** Election Law §14-114(10). In light of these considerations, the rules implement the Campaign Finance Act's limits on the amount of financial support participating candidates have agreed to accept from politcal party committees. Administrative Code §§3-702(8); 3-703(1)(f). "Generic" and other party expenditures that are enumerated in the rules are not considered in-kind contributions to a participant nominated by the party, and thus are not subject to the contribution and spending limits to which the participant has agreed, unless it is shown that the participant cooperated in the expenditure and that the expenditure was intended to benefit the participant. A participant continues to have the burden of showing that candidate-specific spending by the party after the participant or his or her opponent has been nominated is not an in-kind contribution. The rules also codify Campaign Finance Board Advisory Opinion No. 1993-10 (September 23, 1993), which concluded that certain joint activities by two candidates running as a "ticket" give rise to a presumption that the first candidate's expenditure is not independent of, and thus is an in-kind contribution to, the second candidate. **Spending Public Funds** (R. 1-08(g)(3)) The rules add a presumption that bills first reported after the first post-election disclosure statement are not qualified campaign expenditures. This rules is intended to provide more complete contemporaneous information for the Board's audit and for public disclosure in a timely manner.

9. Statement of Basis and Purpose in City Record Sept. 29, 1997: Expenditure Limits **Expenditure Limits for Election to the Office of City Council** (R. 1-08(j)(1)) Currently candidates who join the New York City Campaign Finance Program and run for the offices of Mayor, Public Advocate, Comptroller and Borough President have the following expenditure limits for the first two calendar years of the four year election cycle: Mayor, Public Advocate, Comptroller: $90,000; Borough President: $60,000. The rule provides an expenditure limit as well for the first two calendar years for participating candidates seeking election to the office of City Council. Specifically, the rule would limit the expenditures for City Council candidates to $24,000 for the years 1998 and 1999 (the first two calendar years of the cycle for the elections to be held in 2001). Subject to mandatory cost of living adjustments calculated beginning in March (N.Y.C. Administrative Code §3-706(1)(e)), the total pre-primary spending limit for city council candidates would be $188,000, and the general election limit would be $124,000. These rules were published for public comment in **The City Record,** August 1, 1997. A public hearing regarding these rules was held on September 10, 1997. A record of this hearing is available upon request. The Board adopted these final rules at a public meeting on September 18, 1997. Pursuant to Administrative Code §3-706(5), the City Council may, within 45 days after its first stated meeting following the receipt of a copy of the adopted rules, approve or disapprove the rules by the adoption of an appropriate resolution. If the Council does not approve or disapprove the adopted rules within this 45 day peeriod, the rules will be deemed to be approved and effective on the forty-sixth day after such stated meeting.

10. Statement of Basis and Purpose in City Record Aug. 20, 2004: Advances 1. **Reimbursement of an Advance is Not an Exempt Expenditure** (Rule 1-08(l)) When a person, including the participating candidate, makes purchases on behalf of the Committee with the expectation of being reimbursed by the Committee, he or she makes an advance to the Committee. Notably, one making an advance is seeking only reimbursement of the purchase price, not any profit or additional payment in excess of the amount advanced. **Cf.** Rule 3-03(c)(3). Currently, reimbursement of advances may be considered exempt from the expenditure limits if the goods or services purchases through the underlying advance have an exempt purpose. Administrative Code §3-706(4), Rule 1-08(l). The Board has encountered obstacles in assessing whether such underlying advances have exempt purposes. The funds used to make an advance do not pass through the bank account of the participant's principal committee, thus interrupting the audit trail between a participant and the vendor from whom the goods or services are actually purchases. This interruption makes it difficult for the

Board to confirm that an expenditure claimed as the reimbursement of an exempt advance actually was used to reimburse such advance, or that the advance itself properly had an exempt purpose, or even that the advance had a proper campaign purpose. The concerns associated with these difficulties are magnified because with advances-as opposed to other forms of expenditures which do not pass directly through a principal committee bank account, such as subcontracted goods or services-the relationship between the candidate and the advancer generally is not arm's length or contractual. These concerns do not apply to a loan and loan repayment, for example, because the funds used for the loan and loan repayment pass through the bank account of the participant's principal committee, and there is no interruption in the audit trail. Advances and their reimbursement provide too great an opportunity for the failure of good recordkeeping, the inability to track the flow of campaign funds, and fraud and misuse of public funds. Public confidence in the Program rests heavily on a full and verifiable accounting of campaign activities from each candidate. Accordingly, the rule provides that the reimbursement of an advance is not an exempt expediture, regardless of the purpose of the underlying advance. Notably, it is the form of the expenditure that underlies the proposed rule, and not the substance of the expense. The rule does not alter the list of currently permitted exempt purposes.

11. Statement of Basis and Purpose in City Record Feb. 11, 2005: Expenditures of Public Funds in Connection With Ballot Proposals (Rule 1-08(g)(2)) These amendments confirm that public funds may not be used to pay expenditures made in connection with ballot proposals unless such expenditures are in the context of and incidental to promoting the candidate's candidacy. **See** Advisory Opinion No. 2003-2 (July 14, 2003). Participating candidates should not be able to subsidize ballot proposal expenditures with public funds, and ballot proposal expenses are not qualified campaign expenditures. The new rule will ensure that public funds, which are distributed for a specific public purpose and public benefit, are not spent for purposes other than those defined in the law.

12. Statement of Basis and Purpose in City Record Feb. 11, 2005: Exempt Expenditures (Rule 1-08(l)) Participants are permitted to establish exempt expenditures either by limiting their aggregate exempt expenditure claims to an amount not greater than 7.5% of the applicable expenditure limit, or by maintaining records that demonstrate that each individual exempt expenditure claim is valid under the Act and the Rules. The amendment requires participants to elect one of these two methods for substantiating exempt expenditure claims by January 15 of the year following the election. Participants are required to file a semi-annual disclosure statement on Janury 15 in the year following the election, pursuant to Rule 3-02(b) (the "January 15 deadline"). The Board will determine which method a participant has chosen for substantiating exempt expenditure claims, based on the amount of the participant's aggregate exempt expenditure claims as of the January 15 deadline, up to and including any exempt expenditure claims made in the semi-annual disclosure statement filed on that date. (In the event of a special election, the Board would make this determination as of the deadline for filing the last required disclosure statement, pursuant to Rule 3-02(b)(2)). Participants whose aggregate exempt expenditures exceed 7.5% of the applicable expenditure limit as of the January 15 deadline will no longer be permitted to amend their disclosure statements and subsequently withdraw exempt expenditure claims in order to qualify for the 7.5% safe harbor. The amendment will prevent participants from withdrawing exempt expenditure claims in order to qualify for the safe harbor, after learning that they have failed to substantiate their exempt expenditure claims through detailed documentation. The Board anticipates that the amendment will simplify Board auditing of exempt expenditures and reduce the potential for the submission of false or erroneous exempt expenditure claims. Further, participants whose aggregate exempt expenditures are less than 7.5% of the spending limit as of the January 15 deadline, and who subsequently amend their disclosure statements to report additional exempt expenditure claims, are required to provide contemporaneous, detailed documentation for all their exempt expenditures, if their aggregate exempt expenditures exceed 7.5% of the applicable spending limit. The amendment clarifies that participants who qualify for the 7.5% safe harbor provision as of January 15, and then amend their disclosure statements to report new exempt expenditure claims, will have to demonstrate that all exempt expenditures are exempt by providing contemporaneous, detailed documentation, pursuant to Rule 1-08(l)(1)(ii). The amendment will also reinforce the requirement that the underlying documentation for demonstrating exempt expenditures must be made and maintained contemporaneously with the exempt expenditures made or incurred. Participants are currently required to create and maintain contemporaneous records for all transactions under Rule 4-01. The amendment will re-emphasize that this requirement applies to documenting exempt expenditure claims as well as other kinds of record-keeping. The Board

anticipates that this contemporaneousness requirement will reduce the potential for fraud, and participants would still be required to comply with the other recordkeeping requirements of the Act and the Rules.

13. Statement of Basis and Purpose in City Record June 18, 2009: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2009, published in **The City Record** on April 14, 2008. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record:** Application of expenditure limits for expenditures related to transfers (Rules 1-08(o)) The amendments clarify that in the case of transfers from a committee that was not another principal committee, participants must allocate to transferred contributions not only expenditures incurred by the transferor committee during the covered election cycle in connection with raising or administering transferred contributions, but also any expenditures incurred by the transferor committee prior to the covered election in connection with raising the transferred contributions. The amendments also clarify that such expenditures will be applied towards the expenditure limit in effect at the time of the transfer. Reporting of expenditures related to transfers (Rule 3-03(c)) The amendments clarify that, in the case of a transfer from a committee that was not another principal committee, the participant must report not only all expenditures made by the transferor committee during the election cycle of the covered election, but also all expenditures made by the transferor committee prior to the election cycle of the covered election in connection with raising such contributions. The amendments also clarify that expenditures incurred during the election cycle of the covered election not made in connection with raising or administering the transferred contributions need not be disclosed in disclosure statements but rather may be disclosed to the Board by providing copies of disclosure statements filed by the transferor committee with the City or State Boards of Elections or the Federal Elections Commission. Training (Rule 2-12) The amendments clarify that campaigns are required to attend pre-election training covering Program requirements and the use of Program software in accordance with a schedule of trainings to be issued by the Board. The amendments also provide the deadlines by which campaigns must complete post-election audit training in order to receive their final audit reports within the shorter time frames provided pursuant to §3-710(1) of the Code. Written petitions for review of public funds determinations (Rule 5-02(a)) The amendments clarify that a petition for review of a post-election public funds determination must be submitted within 30 days of the issuance of the final audit report.

Rules of the City of New York

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

52 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-09 Documents Submitted to the Board.

(a) **Date received.**

(1) **Generally.** Documents submitted to the Board, whether in an electronic manner or otherwise, will be deemed to have been submitted upon receipt by the Board. The Board receives hand-delivered documents at its offices, weekdays between 9 a.m. and 5 p.m., unless otherwise provided by the Board.

(2) **Postmark date.** Except as otherwise provided in paragraph (3) for disclosure statements, a document submitted by non-electronic mail will be deemed to have been received by the Board on the date the document is postmarked. Documents delivered by non-electronic common carriers other than the United States Post Office will be deemed to have been received by the Board on the date the common carrier received the document. Candidates have the burden of demonstrating the date the common carrier received such document, including by means of the common carrier's time stamp or payment receipt.

(3) **Disclosure statements.** (i) Candidates who submit disclosure statements through non-electronic mail with the United States Post Office or by other non-electronic common carrier shall obtain a receipt or date stamp confirming the date on which the carrier received the disclosure statement. Such disclosure statements that are delivered by the Post Office or common carrier to the Board without a postmark or similar mark will be presumed to have been mailed three days earlier unless evidence presented to the Board, such as a post office receipt, establishes otherwise.

(ii) A complete disclosure statement, submitted in an electronic manner or otherwise, actually received by the Board no later than close of business on the due date for that disclosure statement applicable under §3-02 will be

considered to be submitted in a timely manner and to permit the Board to make a payment determination based on matchable contributions claimed therein when the Board next makes payment determinations. In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board may not review disclosure statements for possible payment if they are not actually received by the Board by the specified due date, although the Board may review such disclosure statements when making payment determinations at a later date.

(iii) A complete disclosure statement, not actually received by the Board by the due date applicable under §3-02, that is delivered by non-electronic mail with a postmark date that is on or before the due date, or received by another non-electronic common carrier on or before the due date, nonetheless will be considered to be submitted in a timely manner. This submission, however, may not be sufficiently timely to permit the Board to make a payment determination when the Board next makes payment determinations so the Board shall make a determination on such a disclosure statement at such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(iv) A candidate who fails to deliver a complete disclosure statement in a timely manner is in violation of the Act and subject to penalty under §§3-710.5 and 3-711(1) of the Code.

(4) **Documents submitted electronically.** Candidates and others submitting documents to the Board electronically shall submit such documents in such electronic manner as shall be provided by the Board.

(b) **Legibility; Readability.** The Board will not accept any electronic disclosure statement or other document, or any part thereof, that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board, or if the disclosure statement or other document, or any part thereof, is in a non-electronic format, is illegible.

(c) **Documentation.** Disclosure statements will not be deemed complete unless submitted with the records required by §§3-04(a) and 4-01(b)(2), (3), and (6) for each matchable contribution claimed in the disclosure statement.

(d) Date issued or provided. Documents sent by mail, including any report or notice, shall be considered issued or provided by the Board on the date the document is postmarked. Documents sent by a common carrier shall be considered issued or provided by the Board on the date that the documents were received by the common carrier. Documents sent by electronic mail to an e-mail address provided to the Board shall be considered issued or provided upon transmission, unless the Board is informed that the transmission did not reach the intended recipient.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See Note 3]

Subd. (a) amended City Record Aug. 7, 2002 Part D Subpart 1, eff. Sept. 6, 2002. [See Note 1]

Subd. (a) par (2) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Aug. 7, 2002 Part D Subpart 1, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

DERIVATION

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) par (1) amended City Record July 20, 1999 §19, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (a) par (2) amended City Record Oct. 18, 1996 §13, eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (3) subpar (iv) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (3) subpar (iii) amended (as subpar (ii)) City Record July 20, 1999 §20, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (a) par (3) subpar (ii) amended City Record Oct. 18, 1996 §13, eff. Jan. 1, 1997. [See Note 2]

Subd. (a) par (3) subpar (iv) repealed City Record July 20, 1999 §20, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (c) added City Record Aug. 7, 2002 Part D Subpart 2, eff. Sept. 6, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

1. **Timely Submission of Disclosure Statements; Electronic Document Submission** (§1-09(a), (b), 1-02)

The amendments: (1) confirm that the Board will not make payments within four business days, pursuant to §3-705(4) of the Code, based on submissions that are not filed in a timely manner; and (2) create a presumption that disclosure statements not submitted to the Board in an electronic manner and received by the Board from the U.S. Postal Service without postmarks were mailed three days prior to receipt by the Board. In addition, the amendment to §1-09(a) requires participants to obtain documentary proof of the date on which the statement was mailed. The amendments also provide for submission of documents to the Board in an electronic manner.

2. **Required Back-up Documentation for Disclosure Statements** (§1-09(c))

The amendment confirms that disclosure statements are not considered complete unless submitted along with all required back-up documentation. This amendment serves a number of important goals: it is needed as part of a verification process to ensure that documentation submitted is proper; it promotes fairness to all participants by ensuring that all of them must submit complete back-up documentation and on the same schedule; the submission of timely back-up documentation facilitates the Board's review process; and timely review by Board staff benefits participants by enabling them to receive prompt payment.

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Documents Submitted to the Board** (R. 1-09(a)(2) and (3)(ii)) The rules provide that the equivalent of postmark date for documents delivered by common carriers other than the United States Post Office is the date the document is deemed to be received by the Board.

3. Statement of Basis and Purpose in City Record July 31, 2009: Explanation, Basis, and Purpose The Campaign Finance Board Rules are codified in Chapter 52 of the Rules Compilation of the City of New York. The subject matter of this rulemaking was described in the Board's regulatory agenda for fiscal year 2010, published in **The City Record** on April 8, 2009. The amendments effect the following specific changes and will take effect thirty days after final publication in **The City Record**: Documents Submitted to and Issued by the Board (§1-09) The Campaign Finance

Board Rules do not currently provide a standard for determining the date on which a communication from the Board to a candidate is considered to have been sent. The amendments to §1-09 provide that a communication from the Board is considered to be "issued or provided by the Board" on the date that it was postmarked, received by a common carrier, or transmitted by email. Public Access to Information (§6-01) The amendments to §6-01 conform the Rules to recent amendments to the New York State Freedom of Information Law ("FOIL") (Public Officers Law §§ 84 **et seq.**). Board Determinations (§7-02) Local Laws Nos. 34 and 67 of 2007 provided that for elections after January 1, 2008, candidates have the option to have penalty matters and repayment obligations considered by adjudication under the City Administrative Procedure Act ("CAPA"). As a result, candidates may either appear before the Board for a hearing that is similar to the Board's prior practice or may appear before an administrative law judge for a formal hearing at the Office of Administrative Trials and Hearings ("OATH") or elsewhere. The Board has separately asked OATH to adopt proposed rules of procedure specific to hearings at OATH that involve the Board ("OATH Rules"). The Board amends §7-02(c) and (f) to conform them to the OATH Rules. Amendments to §7-02(c) allow the Board to issue documents to a campaign in writing by any medium, and make minor clarifying changes in the rule. Amendments to §7-02(f): permit the Board to send notices to campaigns by first-class mail or e-mail; set forth what materials may be included in a candidate's response to the Board's notice of proposed penalties and public funds repayments; permit Board staff and the campaign to submit written comments to the Board regarding the administrative law judge's report and recommendation before the Board makes its final determination; and provide that the Board issue its written determination within 30 days of the conclusion of the written comments period. These amendments closely reflect the proposed rules of procedure specific to hearings at OATH that involve the Board and will allow the Board to effectuate the OATH Rules so as to comply with CAPA.

Rules of the City of New York

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

52 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-10 Severability.

If any rule or portion thereof is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules. If the application of any rule or portion thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 1 GENERAL PROVISIONS

§1-11 Filer Registration.

Not later than the day that a candidate files the first disclosure statement for an election, the candidate shall submit a filer registration form. The filer registration form shall include:

(a) the candidate's name, address information and telephone numbers, e-mail address, and employment information;

(b) the name and mailing address, and treasurer name, treasurer address information and telephone numbers, treasurer e-mail address, and treasurer employment information, of every political committee authorized by the candidate that has not been terminated, and, in the case of a participant or limited participant, an indication of which such committee is the principal committee;

(c) the name, mailing address, e-mail address, and telephone number of any person designated by the candidate to act as liaison with the Board for each committee filing disclosure statements;

(d) identification of all bank accounts and other depository accounts, including merchant accounts, into which receipts have been, or will be, deposited, and all bank accounts used for the purpose of repaying debt from a previous election; and

(e) other information as required by the Board.

The candidate shall notify the Board of any material change, including any new, or any change to any required

information concerning any political committee, bank account, unique merchant account, candidate or treasurer employment, address, telephone number, or e-mail address, in the filer registration form in such manner as may be provided by the Board. The candidate shall notify the Board of any such changes no later than the next deadline for filing a disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change; provided, however, that if the candidate has extinguished all outstanding liabilities resulting from the election to which the filer registration relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the filer registration information after the date the candidate's final audit report is issued, except as provided in §4-03(b).

(f) **Applicable requirements.** Because the requirements of the Act and these Rules apply to financial transactions that take place before a participant or limited participant joins the Program, the Board advises candidates to comply with all applicable requirements set forth in the Act and these Rules, in anticipation of joining the program.

(g) **Construction.** The submission of a filer registration form, or an amendment thereto, shall not be construed as a statement of intent to become a candidate, to run for any particular office, or to join the Program.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Open par, subds. (a)-(e) amended City Record Feb. 20, 2009 §3, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Open par, subds. (a)-(e) amended City Record May 15, 2008 §5, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to the third sentence of subd. (a) and subd. (c) (misidentified as subd. (b)) take effect Dec. 31, 2003. [See T52 §1-02 Note 5]

Section added City Record May 19, 1994 eff. June 18, 1994.

Subd. (a) amended City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See §5-01 Note 2]

Subd. (a) so designated (formerly Subd. (b)) and amended City Record July 20, 1999 §21, eff. Aug. 19, 1999. [See T52 §1-02 Note 2] Former Subd. (a) repealed. Former Subd. (a) was amended City Record Oct. 10, 1995 §18, eff. Nov. 9, 1995. [See Note 1]

Subd. (a) amended (as Subd. (b)) City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (a) amened (as Subd. (b)) City Record Oct. 24, 1994 eff. Nov. 23, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Disclosure

June 1 Filing (R. 1-11(a); 3-02(a); 3-03(a))

The rules make clear that the filing due on June 1 in the election year, which contains non-contemporaneous information not previously filed with the Campaign Finance Board in a semi-annual disclosure statement, will be submitted either as a single statement or in the form of separate semi-annual statements, as determined by the Board.

Rules of the City of New York

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

52 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-01 Deadlines for Joining the Program. [Repealed]

HISTORICAL NOTE

Section repealed City Record July 20, 1999 §22, eff. Aug. 19, 1999. [See T52 §2-01 Note 1]

Section amended City Record Oct. 10, 1995 §19, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended in part City Record Sept. 2, 1992 eff. Oct. 2, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-01 Certification.

(a) **Contents.** The candidate shall specify in the certification whether he or she is joining the Program as a participant pursuant to §3-703 of the Code or as a limited participant pursuant to §3-718 of the Code. The certification shall include all filer registration information required by Rule 1-11 and such other information as required by the Board, including all information necessary to receive payment by electronic funds transfer. In the certification, the participant or limited participant shall designate a principal committee. A candidate filing the certification as a limited participant shall affirm that he or she has a sufficient amount of personal funds to fund his or her own campaign. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(b) **Legal effect.** The participant shall comply fully with Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the participant: (1) meets all the requirements of law to have his or her name on the ballot in the election; or (2) meets the Act's threshold for eligibility for public funds; or (3) accepts public funds; or (4) is otherwise not eligible to receive public funds in the election. The limited participant shall comply fully with the Program requirements in all elections for which the certification is submitted, regardless of the office sought and regardless whether the limited participant meets all the requirements of law to have his or her name on the ballot in the election. A candidate who does not file a timely certification or who rescinds his or her certification in a timely manner shall be deemed to be a non-participant pursuant to §3-719 of the Code. The certification applies to all elections for an office covered by the Act that are held in the same calendar year or to a special election to fill a vacancy in an office covered by the Act.

(c) **Signatures.** The certification shall contain any signatures and notarizations as may be required by the Board;

provided, however, that to the extent the Board permits a candidate to submit a certification in a non-electronic format, such certification will only be accepted by the Board if it contains an original notarized signature from both the candidate and the principal committee treasurer.

(d) **Amendments.** The participant or limited participant shall notify the Board of any material change in the information submitted pursuant to this rule, including, but not limited to any new, or any change to any required information concerning any political committee, bank account, unique merchant account, candidate or treasurer employment, address, telephone number, or e-mail address, included in the filer registration information required by §1-11, in such manner as may be provided by the Board and no later than the next deadline for filing a disclosure statement or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change, provided, however, that if the participant or limited participant has extinguished all outstanding liabilities resulting from the election to which the certification relates, including payment of any penalties and/or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change to the information required by §1-11 after issuance of the candidate's final audit report, except as provided in §4-03(b). If, based upon a reasonable belief that there has been a material change in the information submitted, the Board requests an amendment, the participant or limited participant shall submit promptly any amendment necessary in such manner as may be provided by the Board. Notification of any change to the candidate's or treasurer's information included in the certification must be made to the Board for six (6) years after the date of the last election to which the certification relates.

(e) **Petition for extraordinary circumstances.**

(1) Pursuant to §3-703(1)(c) of the Code, a certification may be accepted no later than the seventh day after the occurrence of an extraordinary circumstance in an election, if: (i) prior to, or together with, the certification, a written petition is submitted to the Board, sworn to or affirmed by a candidate in such election seeking to join the Program as a participant or limited participant, which sets forth the facts alleged to present an extraordinary circumstance; and (ii) following review of the petition, the Board declares that an extraordinary circumstance has occurred in the election which permits or permitted the acceptance of additional certifications, as provided in §3-703(1)(c). The Board shall provide written notice to each participant and limited participant in an election of its declaration of an extraordinary circumstance in the election, which shall include the names of any additional candidates who have filed certifications in a timely manner in light of the extraordinary circumstance.

(2) Nothing in this rule shall be construed to: (i) require the Board to make a declaration of an extraordinary circumstance within seven days of its occurrence; or (ii) extend the deadline for joining the Program, in the event the Board does not declare that an extraordinary circumstance has occurred until more than seven days after its occurrence; or (iii) prohibit the acceptance of a certification filed by a candidate in an election within seven days after the occurrence of an extraordinary circumstance in that election, if the candidate did not file a petition under subparagraph (1)(i), provided that another candidate in such election has filed such a petition and the Board makes the declaration under subparagraph (1)(ii).

(3) An "extraordinary circumstance" includes: (i) the death of a candidate in an election, (ii) the resignation or removal of the person holding the office sought, and (iii) the submission to the Board of a written declaration, sworn to or affirmed by the holder of the office sought, terminating his or her campaign for reelection (which may be submitted together with a petition under subparagraph (1)(i)).

(f) **Rescission.** A participant or limited participant may rescind his or her certification prior to the certification deadline by filing a certification rescission form.

HISTORICAL NOTE

Section renumbered (formerly §2-02) and amended City Record July 20, 1999 §22, eff. Aug. 19, 1999.

[See Note 1]

Subd. (a) amended City Record May 15, 2008 §6, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §11, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Aug. 7, 2002 Part H Subpart 1 §2, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (d) amended City Record Feb. 20, 2009 §4, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (d) amended City Record May 15, 2008 §6, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) added City Record Oct. 26, 2007 §12, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

DERIVATION

Section amended in part City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section heading amended City Record Oct. 10, 1995 §20, eff. Nov. 9, 1995. [See Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (3) amended City Record Oct. 9, 1998 eff. Nov. 8, 1998. [See T52 §1-02 Note 3] (Note: this subd. (b) was eliminated in City Record July 20, 1999 amendment)

Subd. (c) amended City Record Oct. 10, 1995 §21, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) amended City Record Oct. 10, 1995 §21, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) par (3) amended City Record Feb. 29, 2000 §7, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) added City Record Oct. 10, 1995 §22, eff. Nov. 9, 1995. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Joining the Program

The deadlines for joining the program have been changed. Local Law No. 48 of 1998, amending Administrative Code §3-703(1)(c). To implement the later deadline of June 1 in the election year, amendments will:

· delete the former deadlines. Rule 2-01.

· consolidate the separate certification and campaign information form into a single submission. Rule 2-01, as renumbered.

· create a procedure for candidates to join the Program after June 1, if permitted by the Board after the filing of both a certification and a written petition within seven days after an alleged extraordinary circumstance. Rule 2-01(e).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Joining the Program** (R. 2-01 to 2-05; 3-03(c)(7); 4-01(j), (l); 5-01(b)(1) The rules eliminate the campaign information form, fundraising agent schedule, and campaign office schedule. Committee and bank account information must be submitted (except in special elections) not later than 30 days after the candidate joins the Program as a supplement to the certification. Fundraising agent and campaign office information must be kept as records. Fundraising agents must be reported in disclosure statements. A list of campaign offices must be submitted to the Board when requested. Rule 2-05 ("Authorized Committees") is repealed because it is redundant with the Act.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-02 Breach of Certification.

The Board considers each of the following activities to be a fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification:

(a) submission of a disclosure statement which the participant knew or should have known includes substantial fraudulent matchable contribution claims;

(b) use of public funds to make or reimburse substantial campaign expenditures which the participant knew or should have known were fraudulent;

(c) cooperation in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a participant's or limited participant's nomination or election, which is purported to be paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the participant or limited participant; and

(d) use of a political committee or other entity over which a participant or limited participant exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the participant's or limited participant's nomination or election.

In the event of a fundamental breach, the participant will be deemed by the Board to be ineligible for public funds and to have forfeited all public funds previously received for the elections covered by the certification, and the participant or limited participant will be subject to such civil and criminal sanctions as are applicable under §3-711 of

the Code and other applicable law. This rule is not intended to be an enumeration of all circumstances that may constitute a fundamental breach of obligations, as may be determined by the Board.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See Note 2]

Section added City Record Feb. 29, 2000 §8, eff. Mar. 30, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

Fundamental Breach of Certification

A new Rule 2-02 sets forth those breaches of a participant's certification the Board considers fundamental, such that participant will be deemed to be ineligible for public funds and to have forfeited all public funds previously received. A fundamental breach would include, but not be limited to:

· the submission of fraudulent matchable contribution claims,

· the use of public funds for fraudulent campaign expenditures,

· alleged independent expenditures that were in fact cooperated in by the participant, and

· the use of a political committee or other entity over which the participant exercises control to conceal from the Board expenditures that benefit the participant's nomination or election.

Pursuant to NYC Admin. Code §3-703(1), to be eligible for public funds, a participant must comply with all the requirements of the Campaign Finance Act. The certification is, in effect, a contractual memorialization of this obligation. While breaching that contract could result in a finding that a participant is ineligible for public funds (including the forfeiture of all public funds previously paid for the election), the new rule reflects the Board's sense that such a severe consequence should be applied only for the most egregious violations. The Rule is intended to deter severe abuses of Program obligations.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: **Candidate Participation** 1. **Breach of Certification** (§2-02) The amendments to the first two subsections of §2-02 clarify that a participant has committed a breach of certification if he or she has made substantial fraudulent matchable contribution claims or used public funds for substantial fraudulent campaign expenditures. 2. **Write-In Candidates' Participation in Campaign Finance Program** (§2-08) Write-in candidates are not required to file designating or nominating petitions with the New York City Board of Elections, so they are more difficult to monitor than candidates seeking nomination or election through a position on an election ballot. Section 2-08 requires candidates participating in the Program to notify the Board if they are running a write-in candidacy. The rule also confirms that write-in candidates must file all disclosure statements for the election, and that they are ineligible to receive public funds or to be included in the voter guide for that election. 3. **Terminating a Candidacy** (§§2-09, 3-02(f)(8)) The amendment to §2-09 clarifies the circumstances under which a participant whose campaign has ended may discontinue filing disclosure statements with the Board. In a significant change from the current practice, a participant who has not received public funds may discontinue filing disclosure statements with the Board after filing a verified statement that he or she has ceased all campaign activity, even if the participant continues to be on the ballot for that election.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-03 Campaign Information. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-04 Additional Documents. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-05 Authorized Committees. [Repealed]

HISTORICAL NOTE

Section repealed City Record Oct. 10, 1995 §23, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-06 Bank Accounts.

(a) **Deposit of receipts.** All contributions, loans, and other receipts shall be deposited into the account(s) listed on the candidate's filer registration and/or certification and in disclosure statements filed with the Board. Candidates opening accounts shall maintain at least one account with check writing privileges.

(b) **Separate accounts for different elections.** Receipts accepted for one election shall not be commingled in any account with receipts accepted for any other election, except that receipts for a primary and general election for the same office in the same calendar year may be deposited in the same account. Notwithstanding the foregoing, a candidate seeking election both to an office subject to the Act and to a federal office may maintain a separate allocation account for shared expenses in accordance with Advisory Opinion No. 1996-2 (July 18, 1996).

(c) **Runoff primary and runoff special elections.** A candidate may accept contributions for an anticipated runoff primary or anticipated runoff special election pursuant to §1-04(q).

(1)(i) If a candidate accepts receipts for a runoff election, they shall be deposited into an account from which no disbursements, withdrawals, or transfers are made prior to the day of the preceding primary or special election, as the case may be, except that such contributions may be returned to contributors until the candidate first receives public funds for the runoff election.

(ii) Receipts accepted for a runoff primary shall not be (i) commingled in any account with any receipts accepted for any other election; or (ii) used for a primary or general election held in the year that the runoff primary is held or anticipated.

(iii) Receipts accepted for a runoff special election shall not be commingled in any account with any receipts accepted for any other election or used for any other election until the runoff special election is actually held; provided, however, that funds may be transferred from a special election account to a runoff special election account after the special election so that the funds transferred may be spent in the runoff special election. Receipts accepted for an anticipated runoff special election that is not held may not be spent or otherwise transferred until the earlier of (A) the first January 12 after the date of the special election for which the runoff special election was anticipated or (B) the date upon which all the candidate's liabilities from the special election have been ex- tinguished.

(2) Notwithstanding any provision of subdivision (b) or paragraph (c)(1) to the contrary, funds may be exchanged between an account maintained for a primary and/or the general election and an account maintained for a runoff primary for the following reasons only:

(i) transfers from a primary and/or general election account to a runoff primary account made after the primary election so that the funds transferred may be spent in the runoff primary; and

(ii) transfers from a runoff primary account to a primary and/or general election account made after the runoff primary is held so that the funds transferred may be spent in the general election.

(d) **Special elections.** Receipts accepted for a special election shall not be commingled in any account with any receipts accepted for any other election, except that receipts accepted for a special election may be deposited into an account established for a runoff special election pursuant to §1-04(q) in accordance with paragraph (c) above.

(e) **Personal and business funds.** The personal or business funds of a candidate, his or her agent, or any other person or entity may not be commingled with campaign funds. This rule does not restrict the deposit of contributions or loans into an account maintained by an authorized committee.

(f) **Court-ordered rerun elections.** Public funds received for a court-ordered rerun election shall not be commingled in any account with any other funds.

(g) **Segregated Bank Accounts for §5-01(n) Disbursements.** Contributions received pursuant to §5-01(n)(2) shall be deposited into a segregated bank account established pursuant to such Rule.

HISTORICAL NOTE

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 4]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See T52 §5-01

Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 20, 1999 §23, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §16, eff. Jan. 1, 1997. [See Note 3]

Subd. (b) amended City Record Oct. 10, 1995 §24, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 4]

Subd. (c) amended City Record July 20, 1999 §23, eff. Aug. 19, 1999. [See T52 §1-04 Note 1]

Subd. (c) par (1) open par amended City Record Oct. 10, 1995 §25, eff. Nov. 9, 1995. [See Note 2]

Subd. (e) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants shall maintain at least one bank account for the campaign with check writing privileges. Rule 2-06(a).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Contribution Limits** (2-06(c)(1)) Following Advisory Opinion No. 1993-8 (July 20, 1993), the rules codify that contributions received for a runoff election that is not held may be returned to contributors.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Bank Accounts **Separate Accounts for Different Elections** (R. 2-06(b)) The rule amends the restriction prohibiting the commingling of receipts in more than one account for two different elections. Under the rule, where one candidate sets up an allocation account to pay shared expenses for two elections, the receipts received for one election may be commingled with receipts received for another election in accordance with Advisory Opinion No. 1996-2 (July 18, 1996).

4. Statement of Basis and Purpose in City Record May 5, 2003: Candidate Participation 2. **Bank Accounts for Runoff Special Elections** (§2-06(c), (d)) The amendments to §2-06(c) and (d) establish rules for bank accounts established for anticipated runoff special elections similar to the Board's Rules applicable to bank accounts for anticipated runoff primary elections for citywide offices. Thus, no disbursements, withdrawals, or transfers may be made prior to the date of the preceding special election, except that contributions may be returned to contributors until the participant first receives public funds for the runoff election; and receipts accepted for a runoff special election shall not be commingled in any account with receipts accepted for any other election or used for any other election until after the runoff election is held, except that receipts from a special election account may be transferred to an account established for a runoff special election for use in that runoff election after the special election is held. As with runoff primary elections, funds deposited into an account established for an anticipated runoff special election that is not held will be frozen until the earlier of the first January 12 following the special election for which the runoff was anticipated or the date upon which the participant's last liability from the special election is extinguished.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-07 Participant's Disqualification from Ballot.

(a) **Public fund eligibility.** A participant must qualify to be on the ballot, and be opposed on the ballot, to be eligible for public funds.

(b) **Notice of disqualification.** If a participant or the participant's only remaining opponent in an election is disqualified from the ballot by the New York City Board of Elections or a court of competent jurisdiction, the participant shall immediately inform the Board, by a hand-delivered memorandum, facsimile transmission, telegram, or other method of equivalent speed. If the disqualification by a court of competent jurisdiction was on the grounds that fraudulent acts were committed in order to obtain a place on the ballot, the notice shall so state.

(c) **Remedies for disqualification.** The participant shall notify the Board immediately, in writing, if the disqualified candidate is seeking to appeal or otherwise remedy a disqualification. This notice shall indicate whether a judicial appeal is being taken as of right or by permission and the specific nature of any other judicial remedy sought.

(d) **Disqualification reversed.** The participant shall immediately inform the Board, in writing, if the disqualification of the participant or the opponent is reversed by a court of competent jurisdiction.

HISTORICAL NOTE

Section amended City Record July 20, 1999 §24, eff. Aug. 19, 1999. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) relettered (sub. c) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants must provide notice whether an opponent who has been disqualified from the ballot is appealing the disqualification. Rule 2-07.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-08 Write-in Candidates.

(a) **Notice.** Any candidate who is seeking nomination or election to a covered office as a write-in candidate must promptly so notify the Board in writing.

(b) **Disclosure obligations.** Any candidate who is seeking nomination or election as a write-in candidate must file all disclosure statements for the election as required by §3-02.

(c) **Ineligibility for public funds.** A participant who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election is ineligible to receive public funds. A participant who is on the ballot for a covered election and who is opposed in such election solely by one or more candidates seeking nomination or election exclusively as write-in candidates and who are not on the ballot is ineligible to receive public funds.

(d) **Inclusion in Voter Guide.** A candidate who is seeking nomination or election exclusively as a write-in candidate and who is not on the ballot for the election shall not be included in the voter guide for that election.

HISTORICAL NOTE

Section added City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02 Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section repealed City Record July 20, 1999 §25, eff. Aug. 19, 1999. Former §2-08 Opposing Candidate's Disqualification from Ballot.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-09 Terminating a Candidacy.

(a) **No "Opting-Out".** A candidate may discontinue filing disclosure statements after filing a verified statement that his or her candidacy is terminated in accordance with subsections (b) or (c) of this rule, or if the Board has deemed the candidacy terminated pursuant to subsection (d) of this rule. Terminating a candidacy does not relieve the candidate of other Program obligations, such as maintaining records required by these Rules, submitting documentation or information in response to requests by the Board, and paying penalties for violations of the requirements of the Act and these Rules.

(b) **"Off the ballot" termination.** (1) A participant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (i) is not on the ballot for that election; (ii) is not seeking nomination or election as a write-in candidate; (iii) has not received public funds; and (iv) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(2) A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate: (i) is not on the ballot for that election; and (ii) is not seeking nomination or election as a write-in candidate. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(c) **"Ceased campaigning" termination.** A particiant may submit to the Board a verification that he or she is not a candidate for that election if the participant: (1) has ceased all campaign activity for that election;

(2) has not received public funds; and (3) has not submitted and does not intend to submit a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). A limited participant or non-participant may submit to the Board a verification that he or she is not a candidate for that election if the candidate has ceased all campaign activity for that election. The verification shall be in such form and manner as shall be provided by the Board, and shall contain such signatures as may be required by the Board.

(d) **Termination by Board.** The Board may send a notice to a participant that his or her candidacy has been deemed terminated if the participant: (1) is not on the ballot for that election; (2) has not received public funds; and (3) has not submitted a petition for payment after final disqualification from the ballot, pursuant to §5-02(b). The Board may send a notice to a limited participant or non-participant that his or her candidacy has been deemed terminated if the candidate is not on the ballot for that election. If the candidate is continuing to seek nomination or election as a write-in candidate, or, in the case of a participant, intends to submit a petition for public funds pursuant to §5-02(b), the candidate must so notify the Board within 10 days after receiving the notice of termination, in which case the Board will reverse the termination and the candidate must continue to submit disclosure statements. In any event, the termination will be reversed and disclosure obligations resumed if the candidate remains a candidate in the election.

HISTORICAL NOTE

Section repealed & added City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02

Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §26, eff. Aug. 19, 1999. [See Note 1]

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Oct. 10, 1995 §26, eff. Nov. 9, 1995. [See T52 §7-05 Note 1] [Note

that this subd. (c) was bracketed out of law in City Record July 20, 1999 amendment]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Participants who have submitted ballot petitions, but were then disqualified by the Board of Elections, may terminate their candidacies in accordance with Board procedures. These procedures do not apply to candidates disqualified by a court, regardless whether the candidate was previously disqualified by the Board of Elections. Rule 2-09.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

52 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-10 Limited Participation.

(a) **Generally.** A limited participant shall not be eligible to receive public funds pursuant to §3-705 of the Code. A limited participant is not subject to the contribution limits pursuant to §3-703(f) of the Code; provided, however, that a limited participant shall not accept, at any time before or after the filing of a certification with the Board, either directly, indirectly, or by transfer, any monetary or in-kind contribution, or any loan, guarantee, or other security for such loan made in connection with such candidate's nomination for election or election, except for monetary contributions from the candidate to his or her principal committee made out of the candidate's personal funds or property, in-kind contributions made by the candidate to his or her principal committee, and advances received. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(b) **Program compliance.** Except as otherwise specified in these Rules, the limited participant shall comply fully with Program requirements, including the following:

(1) **Campaign finance disclosure statements.** The limited participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

(2) **Accounting and auditing.** The limited participant shall be subject to all Program accounting and auditing requirements as set forth in Chapter 4 of these Rules.

(3) **Expenditure limitations.** The limited participant shall not make expenditures which in the aggregate exceed the expenditure limitations set forth in the Act.

(c) **Penalties.** The limited participant shall be subject to penalties pursuant to §§3-710.5 and 3-711 of the Code for violations of the Act or these Rules.

HISTORICAL NOTE

Section added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-11 Non-Participation.

(a) **Generally.** A candidate who does not file a certification pursuant to either §3-703 or §3-718 of the Code, or who rescinds his or her certification prior to the certification deadline by filing a certification rescission form, shall be deemed to be a non-participant pursuant to §3-719 of the Code. A non-participant shall not be eligible to receive public funds pursuant to §3-705 of the Code and shall not be subject to the expenditure limitations provided in §3-706 of the Code. A non-participant may accept contributions from political committees notwithstanding the restrictions on such contributions contained in §3-703(k) of the Code.

(b) **Compliance.** Except as otherwise specified in these Rules, the non-participant shall comply fully with the requirements of the Act:

(1) **Campaign finance disclosure statements.** The non-participant shall file all disclosure statements as required pursuant to Chapter 3 of these Rules.

(2) **Accounting and auditing.** The non-participant shall be subject to all accounting and auditing requirements as set forth in Chapter 4 of these Rules.

(3) **Corporate, limited liability company, and partnership contributions.** The non-participant shall not accept, either directly or indirectly, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, or partnership, including a limited liability partnership, other than a corporation, limited liability company, or partnership that is a political committee as defined in the Act. This prohibition does not apply to loans made in the regular course of business, regardless what form of business entity the lender assumes; but does

prohibit the acceptance of a guarantee or other security for such a loan from a corporation, limited liability company, or partnership.

(4) **Contribution limitations.** The non-participant shall not accept, either directly, indirectly, or by transfer, any contribution or contributions from any one individual, political committee, labor organization or other entity for all covered elections held in the same calendar year in which he or she is a candidate which in the aggregate exceed the contribution limitations set forth in §3-703(1)(f) and (1-a) of the Code; provided, however, that a non-participant may make contributions to his or her own authorized committees with his or her personal funds or property and may make advances or loans with his or her personal funds or property, without regard to any contribution limitations provided in §3-703(1)(f) or (h) or (1-a) of the Code. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(5) **Contributors having business dealings with the city.** The non-participant shall inquire of every individual or entity making a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in §3-703(1-a) of the Code whether such contributor has business dealings with the city, as that term is defined in the Act.

(c) **Penalties.** A non-participant shall be subject to penalties pursuant to §§3-710.5 and 3-711 of the Code for violations of the Act or these Rules.

HISTORICAL NOTE

Section added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) amended City Record Oct. 26, 2007 §13, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Oct. 26, 2007 §13, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 2 CANDIDATE REQUIREMENTS*1

§2-12 Mandatory Training.

(a) **Mandatory pre-election training.** Participating candidates, their campaign managers, treasurers or persons with significant managerial control over a campaign shall be required to attend a training provided by the Board concerning compliance with the requirements of the Program and use of the Program software. For purposes of determining compliance with this rule, "persons with significant managerial control" shall not include campaign consultants, and the individual attending the training must be listed on the candidate's filer registration. Such training shall be completed in accordance with a schedule to be published by the Board.

(b) **Optional Post-Election Training.** In order to prepare campaigns to respond effectively to issues raised in the draft audit report, the Act encourages candidates and their staffs to attend post-election audit trainings. Pursuant to §3-710(1) of the Code, where the candidate, the campaign manager, or the treasurer has attended a post-election audit training provided by the Board, the Board will issue final audit reports within fourteen months after the deadline for submission of the final disclosure report for the covered election, in the case of city council and borough-wide races, and within sixteen months after the deadline for submission of the final disclosure report for the covered election in the case of citywide races. The deadlines for attendance at such trainings shall be:

(1) For city council and borough-wide races, the earlier of twenty days following issuance of the draft audit report or eight months after the deadline for submission of the final disclosure report for the covered election;

(2) For citywide races, the earlier of twenty days following issuance of the draft audit report or ten months after the deadline for submission of the final disclosure report for the covered election.

HISTORICAL NOTE

Section amended City Record June 18, 2009 §3, eff. July 18, 2009. Note: Language inadvertently omitted in this amendment was included in text. [See T52 §1-08 Note 13]

Section amended City Record May 15, 2008 §8, eff. June 14, 2008. [See T52 §1-02 Note 7]

Section added City Record Oct. 26, 2007 §14, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Rules of the City of New York

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

52 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-01 Explanation.

Disclosure statements serve several different purposes:

(a) they provide comprehensive disclosure of candidates' campaign finances for prompt examination by the voting public and permit integration into the Board's computerized Campaign Finance Information System for purposes of additional disclosure, monitoring of campaign finances, and analysis mandated by the Act;

(b) they enable the Board to monitor candidate compliance with Program requirements; and

(c) they enable participants to make claims for public funds.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-02 Filing Dates.

(a) **First disclosure statement.**

(1) A candidate's first disclosure statement shall be the first disclosure statement during the applicable election cycle covering the date on which the candidate first raises or spends funds in furtherance of his or her campaign for election for an office covered by the Act unless otherwise provided by New York Election Law.

(2) In a special election held to fill a vacancy, a candidate's first disclosure statement is due 32 days before the election unless otherwise provided by New York Election Law. As provided pursuant to New York Election Law, if the first disclosure statement for a special election is otherwise due within a period of five days of a required semi-annual disclosure statement, the candidate may file a single combined statement on the date on which the latter of the two separate statements is required to be filed.

(b) **Semi-annual disclosure statements.** (1) Semi-annual disclosure statements are due on January 15 and July 15 in each year of the election cycle and on January 15 in the year after the election.

(2) Notwithstanding paragraph (1) above, (i) for candidates in a special election who continue to raise or spend funds for the following primary or general election, the 27 day post-election disclosure statement described in subdivision (d) shall be the last statement required for the special election; provided, however, that in the event that there is a runoff special election, the semi-annual disclosure statement described in subdivision (d) shall be the last disclosure statement required for all candidates in the special election who continue to raise or spend funds for the following primary or general election, regardless whether they were candidates in the runoff special election; and (ii) for

candidates in a special election who do not continue to raise or spend funds for the following primary or general election, the first semi-annual disclosure statement due following the date of the special election shall be the last statement required for the special election, provided, however, that if the first semi-annual disclosure statement following the date of the special election is due less than 30 days after the deadline for filing the 27 day post-election disclosure statement, then the second semi-annual disclosure statement after the date of the special election shall be the last statement required for the special election.

(3) Following submission of the last disclosure statement for an election, the candidate remains, in any case, with respect to the previous election, subject to all other Program requirements and shall submit such information and proof of compliance as may be requested by the Board, including copies of State forms, bank records, and records demonstrating payment of outstanding liabilities.

(c) **Pre-election disclosure statements:** 32 and 11 days before the election and March 15 and May 15 in the year of the election. In a runoff election, the only pre-election statement is due 4 days before the election.

(d) **Post-election disclosure statements:** 27 days after the election, except in the case of a primary or runoff primary election, the disclosure statement is due 10 days after the election, and in the case of a runoff special election, disclosure statements are due both 27 days after the election and on the first January 15 or July 15 following the date of the runoff special election. Candidates in the special election must file both post-runoff special election disclosure statements regardless whether they were on the ballot in the runoff special election.

(e) **Daily disclosures during two weeks preceding the election.** If a candidate: (1) accepts a contribution or contributions from a single source or loan in excess of $1,000; or (2) makes an expenditure in excess of $20,000; during the 14 days preceding an election, the candidate shall report such contributions, loans and expenditures to the Board in a disclosure, received by the Board within 24 hours after it is accepted or made. These disclosures shall be submitted in such form and manner as shall be provided by the Board and shall include any signatures or notarizations required by the Board. Information reported in these daily disclosures must also be reported in the candidate's next disclosure statement.

(f) **Exceptions.** (1) **Not in primary election.** A candidate need not submit the two pre-primary and the 10 day post-primary election disclosure statements if the candidate is not a candidate in a primary election unless the candidate is a participant or limited participant claiming that expenditures are subject to a primary election spending limit, pursuant to §1-08(c)(2)(ii) or (iii). If the candidate is not a candidate in the primary, daily disclosures during the two weeks preceding the primary need not be submitted.

(2) **Not in general election.** A candidate need not submit the two pre-general election and 27 day post-general election disclosure statements or daily disclosures during the two weeks preceding the general election, if the candidate is not a candidate in the general election.

(3) **Deferred filing.** A candidate need not submit a full disclosure statement, if the candidate has accepted less than $2,000 in contributions and loans since the candidate last submitted a disclosure statement and has not made expenditures exceeding forty-five percent of the applicable expenditure limit. This paragraph does not apply to semi-annual disclosure statements. On each disclosure statement filing date for which an exception is not provided pursuant to paragraph (1) or (2), the treasurer shall verify, in a manner provided by the Board, that a full disclosure statement is not required to be submitted pursuant to this paragraph.

(4) **Small campaigns.** A candidate need not submit full disclosure statements if neither the total cumulative receipts nor the total cumulative expenditures of the candidate exceeds an amount equal to three times the contribution limit applicable under the Act. On each disclosure statement filing date for which an exception is not provided pursuant to paragraph (1) or (2), the treasurer shall verify, in a manner provided by the Board, that full disclosure statements are not required to be submitted pursuant to this paragraph.

(5) **Other political committees.** Political committees that are not involved in a covered election shall not file disclosure statements, or State or Federal forms, except as requested by the Board. Notwithstanding the foregoing, the financial records of any committees of a candidate are subject to Board review for purposes of monitoring the candidate's compliance with the requirements of the Act and these Rules and shall be made available to the Board upon its request.

(6) **Next disclosure statement.** Information which would otherwise be included in a disclosure statement for which an exception is provided pursuant to paragraph (1), (2), (3), or (4) shall be included in the next disclosure statement required to be submitted to the Board.

(7) **Board requests.** Notwithstanding any deferral or exception provided by this subdivision, candidates must submit such disclosure statements or other documents as may be requested by the Board.

(8) **Terminated candidacy.** A candidate need not submit any disclosure statements if his or her candidacy has been terminated, as described in §2-09(b), (c), and (d), and the termination is not reversed pursuant to §2-09(d).

(9) **Terminated committee.** If a committee terminates activities (by complete payment of all liabilities and expenditure of all funds in its possession) before the last disclosure statement for an election is due, the committee shall file its last disclosure statement for the election upon its termination, together with a cover letter stating that it has terminated its activities.

(g) Reserved.

(h) **Weekends and holidays.** If a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the submission of the disclosure statement by 5 p.m. on the next business day shall be considered timely.

(i) Reserved.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record May 15, 2008 §9, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) par (2) amended City Record Feb. 20, 2009 §5, eff. Mar. 22, 2009. [See T52 §1-04

Note 10]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) repealed City Record Oct. 10, 1995 §29, eff. Nov. 9, 1995. [See Note 3]

Subd. (i) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendment to par (2)

takes effect Dec. 31, 2003. [See Note 5]

Subd. (a) amended City Record July 20, 1999 §27, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (a) amended City Record Oct. 10, 1995 §27, eff. Nov. 9, 1995. [See T52 §1-11 Note 1]

Subd. (a) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (b) amended City Record Oct. 10, 1995 §27, eff. Nov. 9, 1995. [See Note 3]

Subd. (b) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (2) amended City Record May 21, 2004 eff. June 20, 2004. [See Note 6]

Subd. (c) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (c) amended City Record July 20, 1999 §28, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 5]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Aug. 7, 2002 Part H Subpart 1 §3, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record July 20, 1999 §29, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (e) amended City Record Oct. 18, 1996 eff. §16, Jan. 1, 1997. [See Note 4]

Subd. (e) relettered and amended (former subd. (f)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) relettered and amended (formerly subd. (e)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) par (1) amended City Record Feb. 29, 2000 §9, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (1) amended City Record Oct. 18, 1996 §17, eff. Jan. 1, 1997. [See Note 4]

Subd. (f) par (1) amended City Record Oct. 10, 1995 §28, eff. Nov. 9, 1995. [See T52 §1-08 Note 6]

Subd. (f) par (2) amended City Record Feb. 29, 2000 §9, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (f) par (4) amended City Record July 20, 1999 §30, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (f) par (3)-(4) amended City Record Oct. 18, 1996 §18, 19, eff. Jan. 1, 1997. [See Note 4]

Subd. (f) par (5) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (f) par (5) amended City Record Oct. 10, 1995 §28, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (f) par (6) amended City Record July 20, 1999 §30, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See Note 1]

Subd. (f) par (8) amended City Record Aug. 7, 2002 Part C, eff. Sept. 6, 2002. [See T52 §2-02 Note 2]

Subd. (f) pars (8), (9) added City Record July 20, 1999 §31, eff. Aug. 19, 1999. [See Note 1]

Subd. (g) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (g) par (2) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (i) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to pars. (2), (3) and (4) take effect Dec. 31, 2003. [See T52 §1-02 Note 5]

Subd. (i) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (i) par (1) amended City Record May 21, 2004 eff. June 20, 2004. [See Note 6]

Subd. (i) par (2) amended City Record Aug. 7, 2002 Part D Subpart 3, eff. Sept. 6, 2002. [See Note 2]

Subd. (i) par (2) amended City Record July 20, 1999 §32, eff. Aug. 19, 1999. [See Note 1]

Subd. (i) par (2) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (i) par (2) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Disclosure

Participants who did not file semi-annual disclosure statements with the Board before joining the Program (covering the period through January 11 of the election year) will have to file by June 21, instead of on June 1. Public funds claims included in disclosure statements submitted by the previous January 15 will be reviewed first, however, after which the Board will review subsequent claims as soon as is practicable. Rules 3-02(b); 3-03(a)(2); 5-01(d)(24).

The requirement of a disclosure statement four days before an election will be repealed. Rules 3-02(c); 1-09(a)(3)(4). As a result, daily disclosures will be required in the two weeks before the election for contributions over $1,000 and for loans; for expenditures the daily disclosure trigger will be raised from greater than $5,000 to greater than $20,000. Rule 3-02(e). These changes conform with State law requirements.

New exceptions to the regular filing of disclosure statements are:

· The filing exception for small campaigns will cover committees for which neither total receipts nor total expenditures exceed three times the contribution limit ($13,500 for Citywide office; $10,500 for Borough President; $7,500 for City Council). Rule 3-02(f)(4).

· As under State law, a disclosure statement will be due when a committee terminates its activities (by complete payment of liabilities and expenditure of all funds). Rules 3-02(f)(9); 3-03(a)(1).

The amendments to Rules 3-02 and 3-03(a) will not take effect until January 1, 2000.

With each disclosure statement, copies of contributor checks and cash contribution cards will have to be submitted for each matchable contribution claim, until the Board confirms that the candidate has met the threshold for public financing. Rules 3-04(a) and 4-06.

Disclosure statements may be completed in black or blue ink. Rule 3-06(d). As an alternative to the treasurer, a candidate may sign disclosure statements. Rule 3-08.

Committees formed to support or oppose ballot proposals may voluntarily file disclosure statements with the Campaign Finance Board. Rule 3-10.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: 3. **Additional Disclosure Statements** (§3-02(i)(2)) The amendment, which will become effective in 2005, provides for additional voluntary pre-certification disclosure statements to be due on March 15 and May 15 in the year of an election. These new disclosure statements will provide valuable public disclosure. Further, by dividing up the current six-month reporting period into three disclosure periods, the proposed amendment reduces the burden on participants and Board staff of creating and reviewing the July 15 disclosure statement. Finally, because most candidates do not have any significant activity until after the January 15 disclosure statement, the Board currently has no ability to provide these candidates with feedback on their compliance and reporting prior to certification. The additional disclosure statements will enable Board staff to provide feedback to participants on pre-certification disclosure statements on two additional occasions. Because these disclosure statements are filed prior to the deadline for the certification, candidates who have not yet joined the Campaign Finance Program will not be obligated to file them, although candidates who do not file them or the January 15 disclosure statement will not receive any pre-certification feedback from Board staff. The amendment also makes a technical change to conform a cite reference to a change to §5-01(d) contained elsewhere herein. That change shall be effective 30 days from the date of publication in **The City Record.**

3. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Last Disclosure Statement** (R. 3-02(b), (g); 1-04(g)(7)) The rules eliminate the July 15 disclosure statement due after the election, making January 15 the last deadline for a Campaign Finance Program disclosure statement for an election. For special elections, the rules codify that the 27 day post-election filing is the last special election filing for a committee that goes on to raise funds for the primary or general election, following Advisory Opinions Nos. 1992-3 (December 16, 1992) and 1994-1 (February 23, l1994). The rules also repeal language tying the last filing deadline to the day the participant pays off the last liability for the election and the rule deeming debt outstanding as of the last disclosure statement to be a contribution from a single source. Because participating candidates remain subject to Program requirements for the previous election, even after submitting their last disclosure statement, candidates must continue to submit, upon Board request, proof of ongoing compliance, such as copies of Board of Elections filings, bank records, and records demonstrating payment of outstanding liabilities.

4. Statement of Basis and Purpose in City Record Oct. 18, 1996: Disclosure **Daily Disclosures During Week Preceding the Election** (R. 3-02(e)) Under the rules, a participant is required to file a daily report for any expenditure made in excess of $5,000 in the week before an election, not $1,000 as is the case under the current rules. In addition, the rules repeal the requirement that participants file disclosure statements in the week preceding the election regarding

loans received or guarantees or other security for loans received. **Exceptions** (R. 3-02(f)(1), (4)) The rules simplify the filing requirements for those participants not in a primary election. These campaigns need not file daily disclosure statements in the week preceding the primary election. The rules also increase the total receipts or expenditures under which candidates can qualify for the small campaign exception to filing disclosure statements.

5. Statement of Basis and Purpose in City Record May 5, 2003: Disclosure Statements 1. **Filing Dates** (§3-02(a)) The amendments confirm that the first disclosure statement filed by a participant in a special election is due 32 days before the election, unless otherwise provided by New York State Election Law. New York State Election Law §14-108 and New York State Board of Elections Regulation §6200.2 provide that political committees must file disclosure statements on July 15 and January 15 in a calendar year. Consequently, a participant's special election principal committee may be required to file a disclosure statement with the Board of Elections on January 15 or July 15, regardless when the special election is held. New York City Charter §1052(a)(8) provides that the Campaign Finance Board's disclosure statement filing schedule "shall be in accordance with the schedule specified by the state board of elections." The amendment confirms that to the extent a participant's special election principal committee is required to file a disclosure statement with the Board of Elections on a January 15 or July 15 prior to the election, the participant must also file a disclosure statement with the Campaign Finance Board. 2. **Special Election Disclosure Statements** (§3-02(b), (c), (d)) The amendments establish disclosure statement due dates for runoff special elections. As with runoff primary elections, the only pre-runoff special election disclosure statement will be due 4 days before the election. However, since the post-runoff primary election disclosure statement is designed to coincide with a pre-general election disclosure statement due date, and there is no corresponding election held following a runoff special election, the post-runoff special election disclosure statement due dates will not follow the runoff primary election schedule. Rather, post-runoff special election disclosure statements will be due both 27 days after the runoff special election and on the first semi-annual disclosure statement filing date following the date of the runoff special election. These post-runoff special election disclosure statements will be filed by all participants in the special election, regardless whether they were candidates in the runoff special election.

6. Statement of Basis and Purpose in City Record May 21, 2004: Special Election Disclosure Statements (Rule 3-02(b)(2)) Participants in a regularly scheduled election must file semi-annual disclosure statements on July 15 in the year of the election and on January 15 in the year after the election. Rule 3-02(b)(1). Special elections occur at various times during the year, and often are held more than six months before one of these semi-annual disclosure statement due dates. For example, a special election held in February is almost one year from the January 15 disclosure statement deadline. Because special elections generally are short elections with limited campaign activity, there is little need for a disclosure statement filing so many months after the election. The rule confirms that participants in a special election who do not continue to raise or spend funds for the following primary or general election only need to file the first semi-annual disclosure statement due after the date of the election, and not both the July 15 and January 15 disclosure statements. Prospective Participant's First Disclosure Statement (Rule 3-02(i)(1)) Local Law No. 12 of 2003 authorized the Board to provide prospective participants with additional due dates for filing optional pre-certification disclosure statements, beyond those disclosure statement due dates already provided for by the Board of Elections. **See** Administrative Code §3-703(6), as amended by Local Law No. 12 of 2003. The rule incorporates the additional dates authorized by the local law, by confirming that prospective participants may also file pre-certification disclosure statements on March 15 or May 15 of the election year for the office sought by the prospective participant. Prospective participants may begin to file optional pre-certification disclosure statements on any start date provided in the rule. However, under the current law, if a prospective participant does not file any one of these disclosure statements in a complete and timely manner, any matchable contribution claims he or she makes that could or should have been reported in that statement will be deemed invalid. **See** Board Rule 5-01(d)(21); **see also** Board Rule 3-02(i)(2).

Rules of the City of New York

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

52 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-03 Contents.

(a) **Reporting period.**

(1) **Generally.** The reporting period for each disclosure statement shall:

(i) except for the first disclosure statement for an election, begin on the third day before the deadline for the submission of the candidate's preceding disclosure statement; and

(ii) conclude on and include the fourth day before the deadline for the submission of that disclosure statement (except as otherwise provided in §3-02(f)(9)).

(2) **First disclosure statement.** The reporting period for a candidate's first disclosure statement for an election shall begin on the day the candidate first raises or spends funds in furtherance of his or her election for an office covered by the Act. Submissions required by §3-02(a)(2) shall cover the reporting periods of the missing disclosure.

(3) **Special elections.** In the case of a special election the reporting period for the first disclosure shall conclude on the thirty-sixth day before the election, unless otherwise provided pursuant to New York Election Law.

(b) **Summary information.** Each disclosure statement shall include the following information about the committee involved in the election:

(1) the cash balance at the beginning and end of the reporting period;

(2) total itemized and unitemized contributions, loans, and other receipts accepted during the reporting period; and

(3) total itemized and unitemized expenditures made during the reporting period.

A separate disclosure statement shall be submitted for each committee involved in the election. All data reported in disclosure statements, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

(c) **Contributions and other receipts.** (1) **Basic contents.** Each disclosure statement shall include the following information about receipts accepted by the committee during the reporting period:

(i) for each contribution accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address;

(ii) the date of receipt and amount of each contribution accepted or other receipt;

(iii) whether a contribution was made in cash;

(iv) the number of any check or money order used to make the contribution;

(v) the date and amount of each contribution returned to a contributor;

(vi) each previously reported contribution for which the check was returned unpaid; (vii) in the case of contributions in excess of the amounts set forth in §3-703(1-a) of the Code, whether the contributor indicated that the contributor has business dealings with the City as defined in the Act, and if so, the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings; and

(viii) such other information as the Board may require.

(2) **Transfers.** The candidate shall report contemporaneously the aggregate amount of each transfer and each contribution to which it is attributed. In addition, the participant shall report, in the case of a transfer from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate: (i) all expenditures made by the transferor committee during the election cycle of the covered election; and (ii) all expenditures made by the transferor committee prior to the covered election cycle in connection with raising such contributions. Such reporting of expenditures shall be made in the same disclosure statement in which the transfer is reported, except that expenditures incurred during the covered election cycle for purposes other than raising or administering the transferred contributions need not be reported in disclosure statements to be filed with the Board but rather may be disclosed to the Board by providing copies of the transferor committee's New York City or New York State Boards of Elections or Federal disclosure statements. Further, the candidate shall submit contemporaneously the records required to be maintained pursuant to §4-01(b)(8).

(3) **Advances and reimbursements.** The candidate shall report in each disclosure statement:

(i) the name and address of each person, including the candidate, who has made purchases on behalf of the committee during the reporting period with the expectation of being reimbursed by the committee;

(ii) the date and amount of each such purchase;

(iii) the name and address of the person or entity from whom the purchase has been made;

(iv) the form of the purchase;

(v) the purpose of the purchase;

(vi) the name of each person, including the candidate, whom the committee reimbursed for purchases made on behalf of the Committee during the reporting period, each purchase being reimbursed, and the amount and form of each reimbursement; and

(vii) such other information as the Board may require.

(4) **Contributions totalling $99 or less from a single source.**

(i) Contributions totaling $99 or less from a single source need not be separately itemized in a disclosure statement. Contributions that are not itemized are not matchable.

(ii) Candidates shall include the total amount of unitemized contributions delivered or solicited by an intermediary when reporting the total amount of all contributions the intermediary has delivered or solicited.

(5) **Unitemized contributions totalling more than $99 from a single source.** If a candidate has accepted unitemized contributions totalling more than $99 from a single source, the contribution causing the total to exceed $99 shall be itemized and the total of previously unitemized contributions shall be reported in the same disclosure statement. All subsequent contributions from that single source must be itemized.

(6) **Employment information.**

(i) The candidate need not report the occupation, employer, or business address of any contributor making contributions totaling $99 or less.

(ii) Notwithstanding subdivision (i), the participant shall report the occupation, employer, and business address of any contributor making contributions totaling $99 or less if such contributor is an employee of the candidate or an employee of the spouse or domestic partner of such candidate or an employee of a business entity in which such candidate, spouse or domestic partner has an ownership interest of ten percent or more or in which such candidate, spouse or domestic partner holds a management position, such as the position of officer, director or trustee.

(iii) Matchable contribution claims on contributions totaling more than $99 shall be invalid unless the participant has reported the contributor's occupation, employer, and business address. Matchable contribution claims on contributions totaling less than $99 shall be invalid unless the participant has reported the contributor's occupation, employer, and business address when such information is required pursuant to subdivision (ii).

(7) **Intermediary requirements.**

(i) **Exceptions.** (A) The candidate need not report an intermediary for aggregate contributions of $500 or less collected from a contributor in connection with a party or other candidate-related event held at the residence of the person delivering the contribution, unless the expenses of such events at such residence for such candidate exceed $500 for an election. (B) The candidate need not report an intermediary for contributions collected at a campaign sponsored fundraising event paid for in whole or in part by the campaign. In the case of contributions collected at a non-campaign sponsored fundraising event where there are multiple hosts, the hosts shall designate one host who shall be reported by the candidate as the intermediary for all such contributions. For the purposes of this rule, "campaign sponsored fundraising event" shall mean an event organized by a candidate's authorized committee to raise funds for such candidate.

(ii) **Contributions delivered to fundraising agents.** The candidate shall report any intermediary delivering a contribution to a fundraising agent and shall not report the fundraising agent as an intermediary in a disclosure statement. The candidate shall also report each fundraising agent not reported in a previous disclosure statement for the election.

(iii) **Contributions delivered by an intermediary's agent.** The candidate shall report as the intermediary a person who solicits contribution(s) and directs his or her agent to deliver them to the candidate or fundraising agent. The candidate shall not report the agent as an intermediary.

(8) Reserved.

(9) **Affiliated contributors.** Affiliated contributors considered to be a "single source" under §1-04(h) must be identified on a schedule provided by the Board.

(10) **Joint fundraising events.** The candidate shall report in a cover letter submitted with the disclosure statement a list of all contributions reported in that disclosure statement that were accepted at an event at which contributions were solicited or accepted both for elections subject to and not subject to the Act.

(d) **Loans.**

Each disclosure statement shall include the following information about loans accepted or repaid by the committee during the reporting period:

(1) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address;

(2) the date and amount of each loan, guarantee, or other security for a loan accepted; (3) the date and amount of each loan payment made;

(4) the amount of any portion of a loan which has been forgiven; and

(5) such other information as the Board may require.

(e) **Expenditures.** (1) Each disclosure statement shall include the following information about expenditures (disbursements and unpaid liabilities) made by the candidate during the reporting period:

(i) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement;

(ii) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred;

(iii) the reason why any expenditure is exempt; and

(iv) such other information as the Board may require.

(2) Expenditures of less than $50 need not be separately itemized in a disclosure statement. Public funds may not be used to pay for unitemized expenditures.

(3) **Subcontracted goods and services.** If the candidate makes an expenditure to a consultant or other person or entity who or which subcontracts for finished goods or services on behalf of the candidate, the disclosure statement shall include: (i) expenditures made by the candidate to the consultant or other person or entity during the reporting period; and (ii) if the cost of the subcontracted goods or services provided by a single person or entity exceeds $5,000 in a campaign, the name and address of that person or entity, the amount(s) expended to that person or entity for subcontracted goods or services, and the purpose(s) of those goods or services; provided that this disclosure shall be made in the manner provided by the Board, either beginning in the reporting period in which the candidate knows or has reason to believe that such cost first exceeds $5,000 or in the first post-election disclosure statement for the election to which the expenditure relates.

(4) **Credit card and charge card purchases.** The candidate shall report the actual vendor and purchase price

incurred for any goods purchased with a credit card or charge card, in the manner provided by the Board. Disbursements to credit card and charge card accounts shall not be itemized as such.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record July 20, 1999 §34, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (1) amended City Record Oct. 26, 2007 §15, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) par (2) amended City Record June 18, 2009 §2, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (c) par (4) amended City Record May 15, 2008 §10, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) par (7) subpar (i) amended City Record May 15, 2008 §10, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) par (8) repealed City Record Oct. 26, 2007 §16, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) repealed City Record Oct. 10, 1995 §38, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

DERIVATION

Subd. (a) par (2) amended City Record May 5, 2003 eff. June 4, 2003 except that the amendments to §3-03(a)(2) will not be effective for a principal committee in the 2003 elections that was in existence as of December 1, 2002 as an authorized committee of the participant, pursuant to Section 16 of Local Law No. 12 of 2003. [See T52 §1-02 Note 5]

Subd. (a) amended (par (3) inadvertently omitted in amendment) City Record July 20, 1999 §33, eff. Aug. 19, 1999 and applying to elections held on and after Jan. 1, 2000. [See T52 §3-02 Note 1]

Subd. (a) amended City Record Oct. 10, 1995 §30, eff. Nov. 9, 1995. [See T52 §1-11 Note 1]

Subd. (a) amended City Record May 19, 1994 eff. June 19, 1994.

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) amended City Record Sept. 5, 1991 eff. Oct. 1, 1991.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (c) par (1) amended City Record Aug. 7, 2002 Part D Subpart 4, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) pars (1), (2) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (2) amended Oct. 10, 1995 §31, eff. Nov. 9, 1995. [See T52 §1-07 Note 1]

Subd. (c) par (2) subpar (v) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) par (3) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 4]

Subd. (c) par (3) repealed and added City Record Oct. 10, 1995 §32, eff. Nov. 9, 1995. [See T52 §1-07 Note 1 and T52 §1-02 Note 4]

Subd. (c) par (3) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) par (3) subpar (iii) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (c) par (4) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c) par (6) amended City Record Dec. 23, 2004 eff. Jan. 22, 2005. [See Note 5]

Subd. (c) par (6) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 3]

Subd. (c) par (6) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See Note 1]

Subd. (c) par (6) amended City Record Oct. 10, 1995 §33, eff. Nov. 9, 1995. [See Note 2]

Subd. (c) par (7) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c) par (7) subpar (ii) amended City Record July 20, 1999 §35, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) par (7) subpar (ii) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (c) par (7) subpar (ii) amended City Record Oct. 10, 1995 §34, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (c) par (7) subpar (iii) amended City Record Oct 10, 1995 §34, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (c) par (8) amended City Record Aug. 7, 2002 Part B, eff. Sept. 6, 2002. [See T52 §1-04 Note 3]

Subd. (c) par (8) added City Record Oct. 10, 1995 §35, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (9) amended City Record July 20, 1999 §36, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (c) par (9) added City Record Oct. 10, 1995 §35, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) par (10) added City Record Nov. 19, 1996 eff. Dec. 19, 1996. [See T52 §1-04 Note 6]

Subd. (d) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (d) amended City Record Oct. 10, 1995 §36, eff. Nov. 9, 1995. [See T52 §1-05 Note 2]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (3) subpar (ii) amended City Record Oct. 10, 1995 §37, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (f) amended City Record Sept. 2, 1992 eff. oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

4. **Disclosure of Check Numbers and Serial Numbers of Money Orders** (§3-03(c)(1))

The Board's C-SMART software requests that campaigns report the check numbers for contributions made by check, but this disclosure is not explicitly required by the Board's Rules. The amendment of §3-03(c)(1) formalizes this requirement, and additionally requires the disclosure of serial numbers for money order contributions.

5. **Clarify Treatment of Reporting Requirements** (§§3-03(c)(6), 4-02, 11-05)

The amendments conform provisions in the Rules regarding the efforts required to comply with the Program's reporting requirements to the provisions of Campaign Finance Act §3-703(6).

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Matchable Contributions** (R. 3-03(c)(6); 5-01(d)(12), (26), (27)) The rules codify the following additional reasons for invalidating matchable contribution claims: funds received for other elections (surplus funds and transfers-in from committees not involved in the current election); contributions made by money order exceeding $100, unless the disclosure statement included a copy of the money order and money order contribution card; contributions of $1,000 or more when the disclosure statement omitted contributor employment information and a record was not submitted with the disclosure statement otherwise showing that a good faith effort was made to obtain employment information.

3. Statement of Basis and Purpose in City Record May 5, 2003: 7. **Reporting Employment Information** (§3-03(c)(6)) Local Law No. 12 of 2003 amended the standard for reporting contribution and expenditure information to the Board from an obligation to report such information to the best of one's knowledge to an absolute requirement. **See** Administrative Code §3-703(6), as amended by Local Law No. 12 of 2003. Currently, §3-03(c)(6) provides that matchable contribution claims on contributions of $500 or more for which employer information has not been reported are invalid unless the participant submits a record detailing his or her best efforts to obtain the information. The amendment amends §3-03(c)(6) to eliminate the best efforts concept for reporting employment information.

4. Statement of Basis and Purpose in City Record Aug. 20, 2004: 2. **Advances Must be Itemized in Disclosure**

Statements (Rule 3-03(c)(3)) Under the Board's current rules, advances and their reimbursement are disclosed in a lump-sum manner, and the Board and the public have no way of determining the ultimate payee or purpose for any advance, or the amount of any individual purchase. The rule provides that each individual advance must be itemized in a disclosure statement. The disclosure must include the name and address of the advancer and the party from whom the goods or services are purchased; the date, amount, form, and purpose of the purchase; whether the advancer has been reimbursed by the campaign; and the form of any reimbursements. The Board anticipates that the rule will improve disclosure for the benefit of the public and oversight for the Board. The auditing concerns discussed above, in **"Reimbursement of an Advance is Not an Exempt Expenditure,"** strongly counsel against treating advances and their reimbursement as qualified expenditures for which public funds may be used. Therefore, the rule does not alter the status of reimbursements of advances as expenditures that are not qualified.

5. Statement of Basis and Purpose in City Record Dec. 23, 2004: Reporting Employment Information of Contributors (Rules 3-03(c)(6) and 5-01(d)(11)) Administrative Code §3-703(6) provides that disclosure statements must include employment information for any contributor who contributes more than $99 to a candidate. However, former Rules 3-03(c)(6) and 5-01(d)(11) allowed the Board to match contributions of between $99 and $500 without such employment information. The rule amendment conforms provisions of the Rules (**see** Rules 3-03(c)(6) and 5-01(d)(11)) to the plain language requirements of the law by providing that contributions in excess of $99 will not be matchable if employment information is not reported.

Rules of the City of New York

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

52 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-04 Claiming Matchable Contributions.

(a) **Threshold; back-up documentation.** A participant's disclosure statement shall indicate whether he or she has met the Act's threshold for eligibility for public funds. Participants shall submit with each disclosure statement a copy of the records required to be maintained pursuant to §4-01(b)(2), (3), and (6) for each matchable contribution claimed in the disclosure statement. A matchable contribution claim will be invalidated unless the records that are required to be maintained pursuant to §4-01(b)(2), (3), and (6) are submitted with the disclosure statement in which the contribution is reported. Matchable contribution claims determined by the Board to be invalid pursuant to the Act and these Rules shall not be counted toward a participant's threshold for eligibility for public financing. This rule applies to candidates seeking to preserve matchable contribution claims received prior to filing a certification with the Board pursuant to §3-703(12)(a) of the Code.

(b) **Matchable contributions.** The disclosure statement shall state the total amount of matchable contributions claimed in a reporting period and whether the participant seeks public funds for these matchable contributions. Contributions received in violation of any law, including but not limited to cash contributions from any one contributor greater than $100, are not matchable.

(c) **Returned contributions are not matchable.** A matchable contribution may not be claimed for any portion of a contribution that is returned to or not paid by the contributor. A particiant must rescind claims for matchable contributions that are returned or not paid, in the manner provided by the Board, and the participant's public fund payments will be reduced by the matchable contribution amounts returned.

(d) **Loans and loans forgiven are not matchable.** Pursuant to §3-702(3) of the Code, a matchable contribution

may not be claimed for a loan or a loan that is forgiven.

(e) Reserved.

(f) Reserved.

HISTORICAL NOTE

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment]

Subd. (e) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1] This repeal was already accomplished in City Record Nov. 19, 2002.

Subd. (f) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1] This repeal was already accomplished in City Record Nov. 19, 2002.

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 7, 2002 Part D subpart 6, eff. Sept. 6, 2002. [See Note 1]

Subd. (a) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (a) amended City Record July 20, 1999 §37, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Subd. (d) amended City Record Oct. 10, 1995 §39, eff. Nov. 9, 1995. [See T52 §1-05 Note 2]

Subd. (d) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Aug. 7, 2002 Part D Subpart 7, eff. Sept. 6, 2002. [See Note 1]

Subd. (e) added City Record Oct. 10, 1995 §40, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (f) added City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See T52 §4-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

6. **Claiming Matchable Contributions** (§3-04(a))

The current rule permits participants to discontinue the submission of back-up documentation for check contributions after the participant has met the threshold requirement. The amendments require the submission of back-up documentation even after the participant has met the threshold, in order to assist the Board in verifying that public funds are disbursed in the correct amount. Back-up documentation is needed from participants even after they have reached threshold to monitor compliance with the Act and Rules. In addition, the current rule is a source of confusion because participants often do not understand when they can stop submitting back-up documentation.

The amendments also clarify that the Board will consider only valid matchable contribution claims toward the threshold for eligibility for public financing, except that claims invalidated under §5-01(d)(3) solely because they would yield more than the maximum in public funds may be counted toward the threshold amount up to $1,000 per matchable contribution. This change codifies Advisory Opinion No. 2001-9.

7. **Copies of Money Orders and Contribution Cards Must be Submitted for All Money Order Contributions** (§3-04(e))

Current §3-04(e) states that the Board will not match a money order contribution greater than $100 with public funds unless the participant submits photocopies of the money order and a signed contribution card as is required to be maintained by §4-01(b)(3). In order to guard against the disbursement of public funds on the basis of misreported contributions, the amendment extends the requirement to submit such back-up documentation to all money order contributions, including those in the amount of $100 and less.

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Campaign Finance Disclosure Statements **Required Documentation for Matchable Contributions** (Rule 3-04(a)) The amendment codifies the Board's current practice of requiring that, except in the case of contributions made by check signed by the contributor, participants or potential participants must continue to provide with each disclosure statement the documentation required pursuant to Rule 3-04 for each matchable contribution claimed, even after the Board confirms that the participant or potential participant has met the threshold. This does not obviate the requirement to maintain said records or produce them at the Board's request.

Rules of the City of New York

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

52 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-05 Segregated Bank Account Statements, Contribution Cards, and Checks.

Participants seeking to comply with the exception to §5-01(n)(1) contained in paragraph (2) of that Rule must submit copies of segregated bank account statements, contribution cards, and checks to the Board in the manner and to the extent provided by the Rule.

HISTORICAL NOTE

Section added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See §5-01 Note 2]

DERIVATION

Section repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-06 Forms for Disclosure Statements.

Candidates shall submit disclosure statements in such form and manner as shall be provided by the Board and in accordance with Chapter 9 of these Rules.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §4, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Section in original publication July 1, 1991.

Subds. (c), (d) amended City Record July 20, 1999 §38, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

[Note, subds. (c), (d) were bracketed out of rule by City Record Aug. 7, 2002]

Subd. (c) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Rules of the City of New York

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

52 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-07 Insufficient Disclosure Statements.

Disclosure statements that fail to comply substantially with disclosure requirements of the Act or these Rules will not be accepted by the Board. Amendments to or resubmissions of disclosure statements are prohibited unless expressly authorized or requested by the Board.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §39, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Section repealed and added City Record Oct. 10, 1995 §41, eff. Nov. 9, 1995. [See T52 §1-02

Note 4]

Section in original publication July 1, 1991.

Subds. (a), (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Rules of the City of New York

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

52 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-08 Verification.

The candidate or treasurer shall verify that the disclosure statement is true and complete to the best of his or her knowledge, information, and belief. The disclosure statement shall contain such signatures as may be required by the Board; provided, that to the extent a candidate is permitted to submit a disclosure statement in a non-electronic format pursuant to Chapter 9 of these Rules, such disclosure statement will only be accepted by the Board if it contains an original signature from the candidate or the treasurer.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended (heading inadvertently omitted) City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §5, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Section amended City Record July 20, 1999 §40, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

78 of 133 DOCUMENTS

Rules of the City of New York

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

52 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-09 Supplemental Documents.

The Board may, in its discretion, include in its public disclosure file any document submitted with a disclosure statement, or requested by the Board, including but not limited to copies of records required by Chapter 4, State form filings, and submissions made by candidates after an election cycle.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record July 20, 1999 §41, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Section added City Record Oct. 10, 1995 §42, eff. Nov. 9, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Additional Documents in Public Disclosure File (R. 3-09)

When the following documents are received by the Board, the Board may, in its discretion, include them in the public file together with the participating candidate's disclosure statements: summaries of balances and other

information received regarding runoff primary election accounts; loan documentation; list of campaign offices; records required for advances; political advertisements and literature; documents regarding the source of funds originally received for other elections that are used by committees involved in the current election; and such Board of Elections filings and records demonstrating payment of outstanding liabilities as may be submitted by participating candidates after their last Campaign Finance Board disclosure statement.

Rules of the City of New York

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

52 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-10 Ballot Proposal Committees.

A political committee making expenditures in support of or in opposition to a ballot proposal may voluntarily file disclosure statements on disclosure forms provided by the Board and in accordance with the schedule for making these filings at the Board of Elections. These filings may not be accepted unless the committee meets all disclosure requirements of Code §3-703(6) for expenditures, contributions, loans, and other receipts. The Board will enter the information it accepts into its public computer system. These filings shall be available for public inspection and copying at the offices of the Board. A voluntary submission pursuant to this rule is not subject to the audit process or the contribution and expenditure limits of the Program.

HISTORICAL NOTE

Section amended (inadvertently omitting heading) City Record May 5, 2003 eff. June 4, 2003. [This

was a technical correction.]

DERIVATION

Section amended City Record July 20, 1999 §42, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Section added City Record Oct. 18, 1996 eff. Jan. 1, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 18, 1996:

Transition/Inaugural Activities

[Note: The City Record July 20, 1999 amendment changed the purpose of this section]

Filing of Transition and Inaugural Activities (R. 3-10)

The rules mandate that if a candidate voluntarily chooses to file disclosure forms with the Campaign Finance Board for an entity making transition into office and/or inauguration expenses, the candidate must use forms issued by the Board. Any such disclosure statements will be entered into the Board's database for public use.

Rules of the City of New York

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

52 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 3 CAMPAIGN FINANCE DISCLOSURE STATEMENTS

§3-11 Proof of Filing with the Conflicts of Interest Board; Payment of Penalties.

(a) **Requirements.** Participants shall file a copy of a receipt indicating proof of compliance with §12-110 of the Code, including payment of any penalties assessed by the conflicts of interest board. A receipt that is not filed timely may result in a delay of any payment by the Board until the Board next makes payment determinations following the submission of the next disclosure statement such participant is required to file with the Board pursuant to §3-02(b), (c) or (d).

(1) **Due dates.** The receipt shall be considered timely filed if it is filed with the Board on or prior to the last business day of July in the year of the covered election, except as provided by paragraph (2).

(2) **Special election due dates.** In the case of a special election, if the deadline for filing financial disclosure reports with the conflicts of interest board is before the due date for the first disclosure statement required to be filed with the Board pursuant to §3-02(a)(2), the receipt shall be considered timely filed if it is filed with the Board on or prior to the due date for filing this disclosure statement with the Board. If the deadline for filing financial disclosure reports with the conflicts of interest board is on or after the due date for the first disclosure statement required to be filed with the Board pursuant to §3-02(a)(2), the receipt shall be considered timely filed if it is filed with the Board no later than one business day after the last day for filing disclosure reports with the conflicts on interest board.

(b) **Date submitted.** §1-09 shall be applicable for the purpose of determining the date of receipt by the Board of documents submitted pursuant to this section.

HISTORICAL NOTE

Section added City Record May 21, 2004 eff. June 20, 2004. [See Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 21, 2004:

The Act recently was amended to provide that candidates participating in the Campaign Finance Program shall not be eligible to receive public funds unless financial disclosure reports required pursuant to Administrative Code §12-110 have been filed with the Conflicts of Interest Board (the "COIB") and any penalties assessed by the COIB have been paid. **See** Administrative Code §3-703(1)(m), as added by Local Law No. 43 of 2003. The rules conform to the changes to the Act contained in Local Law No. 43, and provide that a candidate otherwise eligible to receive public funds must file with the Board the COIB receipt evidencing compliance with Administrative Code §12-110 to be eligible for public funds. To ensure timely receipt of public funds, a participant must file the COIB receipt no later than July 15 of the election year, unless the deadline for filing financial disclosure reports with the COIB is also on or after July 15, in which case a participant must file the COIB receipt no later than one day after the last day for filing disclosure reports with the COIB.

Rules of the City of New York

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

52 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-01 Records to be Kept.

(a) **Generally.** Candidates must keep records that enable the Board to verify the accuracy of disclosure statements, substantiate that expenditures were made in furtherance of the campaign, were qualified expenditures, or were permissible post-election expenditures, and confirm any matchable contributions claimed. Candidates must maintain and may be required to produce originals and copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in their disclosure statements. Candidates shall maintain clear and accurate records sufficient to show an audit trail that demonstrates compliance with the Act and these Rules. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board. Nothing in this chapter shall be construed to modify the requirements of New York Election Law §14-118. The records maintained for each campaign finance transaction, whether maintained on paper and/or electronically, shall be accurate and, if necessary, modified promptly to ensure continuing accuracy. Records that are contemporaneous and complete, as described in this Rule, including records using forms supplied by the Board, shall be presumed to be sufficient to demonstrate financial activity. If at any time a candidate becomes aware that a record of an expenditure, whether maintained on paper or electronically or both, is missing or incomplete, the candidate may create a new record or modify an existing record, provided that the record so created or modified is clearly identified by the candidate as such, and provided, further, that if the missing or incomplete record is an invoice from a vendor, the candidate must in the first instance attempt to get a duplicate or more complete record directly from such vendor prior to creating a new record or modifying an existing record. In addition, the candidate must create a further record, in the form of a signed, dated, and notarized statement by the candidate and/or treasurer and/or other campaign representative having first-hand knowledge of the matter, explaining the reasons for and the circumstances surrounding the creation or modification of a record. The Board reserves the right not to accept a noncontemporaneous

record created or modified pursuant to this paragraph if, after review of the timing and other circumstances, it determines that the record is not sufficient to document the actual transaction.

(b) **Receipts.** (1) **Deposit slips.** Candidates shall maintain copies of all deposit slips. The deposit slips shall be grouped together with the monetary instruments representing the receipts deposited into the bank or other depository accounts held by the candidate for an election, unless the candidate maintains other records that show, in a manner that similarly facilitates expeditious review, when these receipts were deposited. Where the bank or depository does not provide itemized deposit slips, candidates shall make a contemporaneous written record of each deposit. Such written record shall indicate the date of the deposit, the source and amount of each item deposited, whether each item deposited was a check, a money order, or cash, the name and title of the individual who made the deposit, and the total amount deposited.

(2) **Photocopies of checks and other monetary instruments.** Candidates shall maintain a photocopy of each check or other monetary instrument representing a contribution or other monetary receipt. In order for a contribution in the form of a check signed by an authorized agent of the contributor to be matchable, participants must maintain:

(a) a copy of the check upon which is printed the name of the actual contributor; and

(b) a document, signed by the contributor, which indicates:

(i) that the person signing the check is authorized to do so;

(ii) the date and amount of the contribution; and

(iii) the principal committee's name.

(3) **Cash and money order contribution cards.** (i) For each cash and money order contribution received, participants and non-participants shall maintain a separate written record containing:

(A) the contributor's name;

(B) the contributor's residential address;

(C) the amount of the contribution; and

(D) the authorized committee's name.

(ii) This record shall be signed by the contributor or, if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness to the contribution. Adjacent to the signature, the contributor shall write the date on which he or she signed or marked the contribution card. The following statement shall be placed above the line for the contributor's signature: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan."

(iii) A contribution card which contains any additional information and signatures required by §5-01(n)(2) shall also satisfy the requirements of that Rule.

(4) **Omitted.**

(5) **Intermediary contribution statements.** For each instance in which a candidate accepts contributions from an intermediary, including any contributions delivered to a fundraising agent, or receives contributions solicited by an intermediary where such solicitation is known to the candidate, the candidate shall maintain a separate written record of the intermediary's name, residential address, employer and business address as well as the names of the contributors and

the amounts contributed. This record shall contain the statement: "I hereby affirm that I did not, nor to my knowledge did anyone else, reimburse any contributor in any manner for his or her contribution and none of the submitted contributions was made by the contributor as a loan." This record shall be signed by the intermediary, or if the intermediary is unable to sign his or her name, marked with an "X" and signed by a witness. In addition, the record shall contain the following statement: "The making of false statements in this document is punishable as a class E felony pursuant to section 175.35 of the Penal Law and/or a Class A misdemeanor pursuant to section 210.45 of the Penal Law."

(6) **Credit card contributions.** For each instance in which a candidate accepts contributions by credit card, including contributions received over the Internet, the candidate shall maintain a copy of the unique merchant account agreement as well as copies of all merchant account statements, credit card processing company statements and correspondence, transaction reports or other records demonstrating that the credit card used to process the transaction is that of the individual contributor (including proof of approval by the credit card processor for each contribution and proof of real time address verification), and a separate written record of the contributor's name, residential address, credit card account type, credit card account number, and credit card expiration date. This record shall contain the statement: "I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal credit card account, billed to and paid by me for my personal use, and having no corporate or business affiliation, and is not being made as a loan." This record shall be signed by the contributor, or if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness. Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record. The Board shall provide a specimen of this card. Notwithstanding the requirements of this paragraph, in the case of credit card contributions made over the Internet, authorization cards need not be signed by the contributor. In addition, if the candidate accepts credit card contributions over the Internet, the candidate shall maintain a copy of all website content concerning the solicitation and processing of credit card contributions.

(7) **Segregated Account Contribution Cards.** Participants shall maintain a written record of the contributor's name, residential address, contribution amount, and date for each contribution which the participant deposits into a segregated bank account pursuant to Rule 5-01(n)(2). The record shall be signed by the contributor or, if the contributor is unable to sign his or her name, marked with an "X" and signed by a witness to the contribution, and the following statement shall be placed above the signature line: "I understand that this entire contribution will be used only (i) to pay expenses or debt from a previous election; (ii) by the candidate for an election other than the election for which this contribution is made; or (iii) to support candidates other than the candidate to whose campaign this contribution is made, political party committees, or political clubs. I further understand that this contribution will not be matched with public funds. I understand that State law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record. The Board shall provide a specimen of this card.

(8) **Transfers.** Candidates shall obtain and maintain all records specified by the Board regarding transfers, including, but not limited to, in the case of transfers from a committee not otherwise involved in the covered election, other than another principal committee of the same candidate, a record, obtained prior to receipt of the transfer, demonstrating, for each contribution to be transferred to a participant's authorized committee, the contributor's intent to designate the contribution for the covered election. This record shall contain the statements: "I understand that this contribution will be used by the candidate for an election other than that for which the contribution was originally made. I further understand that the law requires that a contribution be in my name and be from my own funds. I hereby affirm that this contribution was made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." This record shall be signed by the contributor, or if the contributor is unable to sign his or her own name, marked with an "X" and signed by a witness. Adjacent to the signature or mark, the contributor or witness shall write the date on which he or she signed the record.

(c) **In-kind contributions.** For each in-kind contribution, candidates shall maintain a receipt or other written

record that provides the date(s) the in-kind contribution was made, the name and address of the contributor, a detailed description of the goods or services provided, and such further information and/or documentation necessary to show how the value of the contribution was determined.

(d) **Bills.** Candidates shall retain a copy of each bill for goods or services provided. Candidates shall maintain written documentation showing that a bill has been forgiven. Documentation for goods or services must be contemporaneous and must provide the date the vendor was retained or the date the goods or services were provided, the vendor's name and address, the amount of the expenditures, and a detailed description of the goods and services provided. If the invoice supplied by the vendor does not meet these requirements, the candidate must create an additional contemporaneous record containing the necessary information, and such record must be signed by the vendor and the campaign treasurer or other representative of the campaign. In the case of services that were subcontracted by the vendor, candidates must obtain documentation meeting the above requirements for the subcontracted services from the vendor. For wages, salaries, and consulting fees, candidates must maintain a contemporaneous record, signed by the employee or consultant and the campaign, and dated, providing the name and address of the employee or consultant, a detailed description of the services, the amount of the wages, salary or consulting fees, the date(s) on which the work was performed, the period for which the individual was retained, and a detailed breakdown of the number of hours worked. The Board shall provide specimens of records for employees and consultants, including daily timesheets for election day workers and consultant agreements.

(e) **Disbursements.** (1) **By check.** A candidate shall make all disbursements by check, except for petty cash. The date, payee name, purpose, and number of each check, as well as all inter-account transfers, any other debits, and any additional information as determined by the Board, shall be recorded in a checkbook register.

(2) **Petty cash.** Candidates may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the candidate shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

(3) **Credit card and charge card purchases.** Candidates shall maintain a monthly billing statement or customer receipt for each disbursement from a credit card or charge card account showing vendors underlying the disbursement.

(4) **Reimbursement of advances.** Candidates shall obtain vouchers for any reimbursements they make to persons, including the candidate, for purchases made on behalf of the committee. The voucher shall be presented by the person making the purchase and shall include his or her name, the date and amount of the purchase, the vendor's name, and the manner of payment, including check number, credit card name, and cash. A receipt, bill, or invoice from the vendor shall be attached to the voucher.

(f) **Bank records.** Candidates shall maintain the following records received from banks and other depositories relating to accounts:

(1) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds and

(2) all returned and cancelled disbursement checks, including substitute checks which may be returned by the bank in lieu of cancelled checks.

(g) **Loans.** The candidate shall obtain, maintain, and make available to the Board upon its request written documentation:

(1) for each loan received, including loans made by the candidate;

(2) for each loan repayment; and

(3) that shows that a loan has been forgiven. The loan agreement shall be contemporaneous and in writing, shall be signed and dated by both parties, and shall provide all terms and conditions of the loan, including the amount and term of the loan. The candidate shall retain copies of loan checks and records of electronic transfers.

(h) **Subcontracted goods and services.** Candidates required to itemize the cost of subcontracted goods and services pursuant to Rule 3-03(e)(3)(ii) shall obtain and maintain documentation from the consultant or other person who or which subcontracts, containing all information required to be disclosed pursuant to that rule.

(i) **Fundraisers.** Candidates shall maintain records for all fund-raising events, including all house parties, which shall contain: the date and location of the event; the person(s) and/or organization(s), other than the candidate's authorized committee, hosting the event; an itemized listing of all expenses incurred in connection with the event, including all expenses whether or not paid or incurred by the authorized committee; and the contributor name and amount of each contribution received at or in connection with the event. This subdivision does not apply to activities on an individual's residential premises, including house parties, to the extent that the cost of those activities do not exceed $500 and are not contributions pursuant to §3-702(8)(ii) of the Code.

(j) **Campaign offices.** Candidates shall maintain a list identifying the address of each campaign office.

(k) **Political advertisements and literature.** Pursuant to New York Election Law §14-106, candidates shall maintain copies of all advertisements, pamphlets, circulars, flyers, brochures, letterheads, and other printed matter or electronic media purchased or produced and a schedule of all radio or television time purchased and scripts used therein.

(l) **Vendors.** In addition to obtaining and keeping contemporaneous documentation (such as bills) for all goods and services provided by vendors, including campaign consultants and attorneys, and employees, when a candidate retains or otherwise authorizes a person or entity (including an employee) to provide goods and/or services to the candidate, and the candidate knows or has reason to believe that the goods and/or services to be provided directly or indirectly by this vendor will exceed $1,000 in value during the campaign, the candidate shall:

(1) keep a copy of the contemporaneously written contract with the vendor, which shall, at a minimum, provide the name and address of the vendor, be signed and dated by both parties, state the terms of the contract including the terms of payment and a detailed description of the goods and/or services to be provided, and shall include, if the contract was at any time amended, a contemporaneously written contract amendment, signed and dated by both parties and describing in detail the changes to the terms and conditions of the contract, or

(2) if no contemporaneously written contract has been entered into, keep a contemporaneously written record that includes the date the vendor is retained or otherwise authorized by the candidate, the name and address of the vendor, and the terms of the agreement or understanding between the candidate and the vendor including the terms of payment and a detailed description of the goods and/or services the vendor is expected to provide. If the agreement or understanding was at any time amended, the candidate shall create and maintain a contemporaneously written record describing in detail the changes to the terms and conditions of the agreement or understanding.

In addition to the records to be kept pursuant to subparagraphs (1) or (2) above, the candidate shall keep evidence sufficient to demonstrate that the work described in the contract was in fact performed and completed. Such evidence may include samples or copies of work product, emails, time records, phone records, and photographs or other documentary evidence. Where such evidence is nonexistent or unavailable, the candidate shall maintain affidavits signed by the vendor and either the candidate, treasurer, or other campaign representative having first-hand knowledge, describing the goods or services provided and the reason(s) why documentary evidence is nonexistent or unavailable.

(m) **Advances.** In such form as may be prescribed by the Board, candidates shall maintain records of advances which shall include the name and address of each person who made an advance on behalf of the authorized committee,

the amount so advanced, the name and address of each payee to whom advanced funds were paid, the amount paid, and the purpose of each payment.

(n) **Business dealings with the City.** For each individual or entity making a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in §3-703(1-a) of the Code, candidates shall obtain and maintain all records specified by the Board regarding any response, or any failure to respond, concerning whether such individual or entity has business dealings with the City. Such record, at a minimum, shall request that the contributor provide the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings.

(o) **Travel.** Candidates shall obtain and maintain originals and copies of all checks, bills, or other documentation to verify campaign-related travel transactions reported in disclosure statements. In addition to the above, for all travel, with the exception of travel by public transportation within New York City, candidates shall create and maintain a contemporaneous record describing the campaign-related purpose of the travel, the complete travel itinerary, the dates of the travel, and the names of all individuals who participated in the travel. For travel by private car, candidates must create and maintain a contemporaneous travel log providing, for each trip and each vehicle, the names of the driver and passengers, the date(s) and purpose of each trip, the itinerary, including all the locations of any campaign events and other stops, the beginning and ending mileage, and the total mileage. Travel between two stops is considered an individual trip for logging purposes even if the stops are part of a multi-stop itinerary. For the purposes of reporting and reimbursing campaign expenditures, candidates shall calculate expenditures for travel by private car based on mileage according to the provisions of directive six of the New York City Comptroller.

HISTORICAL NOTE

Section amended City Record Oct. 23, 2008 §6, eff. Nov. 22, 2008. This amendment inadvertently omitted section heading, and (b)(3)(ii) & (iii). [See T52 §1-02 Note 8]

Subd. (b) par (6) amended City Record Feb. 20, 2009 §6, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

DERIVATION

Section amended (individually by subdivision) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) par (1) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) amended City Record July 20, 1999 §43, eff. Aug. 19, 1999. [See T52 §1-02 Note 2]

Subd. (a) amended City Record Oct. 10, 1995 §43, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (a) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (a) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record July 20, 1999 §44, eff. Aug. 19, 1999. [See Note 5]

Subd. (b) par (1) amended City Record Oct. 18, 1996 §24, eff. Jan. 1, 1997. [See Note 8]

Subd. (b) par (1) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (2) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (2) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 2]

Subd. (b) par (2) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (3) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (b) par (3) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (b) par (3) amended City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 4]

Subd. (b) par (3) amended City Record Mar. 27, 2001 eff. July 12, 2001. [See Note 3]

Subd. (b) par (3) amended City Record Oct. 18, 1996 §25, eff. Jan. 1, 1997. [See Note 7]

Subd. (b) par (3) amended City Record Oct. 10, 1995 eff. Nov. 9, 1995. [See Note 6]

Subd. (b) par (4) repealed City Record May 5, 2003 eff. June 4, 2003. [See Note 9]

Subd. (b) par (5) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) par (5) amended City Record May 15, 2008 §11, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) par (5) added City Record Mar. 27, 2001 eff. July 12, 2001. [See Note 3]

Subd. (b) par (6) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 5]

Subd. (b) par (6) added City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 4]

Subd. (b) par (7) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (b) par (7) added City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See §5-01 Note 2]

Subd. (d) amended City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record July 20, 1999 §45, eff. Aug. 19, 1999. [See Note 5]

Subd. (d) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) pars (1), (3), (4) amended City Record July 20, 1999 §46, eff. Aug. 19, 1999.

Subd. (e) pars (2), (3) amended Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (4) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (f) amended City Record Oct. 18, 1996 §26, eff. Jan. 1, 1997. [See Note 8]

Subd. (f) par (2) amended City Record July 20, 1999 §47, eff. Aug. 19, 1999. [See Note 5]

Subd. (g) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (i) amended City Record July 20, 1999 §48, eff. Aug. 19, 1999. [See Note 5]

Subd. (i) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (j) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (k) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See Note 6]

Subd. (l) added City Record Feb. 29, 2000 §10, eff. Mar. 30, 2000. [See Note 1]

Subd. (l) repealed City Record July 20, 1999 §49, eff. Aug. 19, 1999. [See Note 5]

Subd. (l) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (m) amended City Record May 5, 2003 eff. June 4 2003. [See T52 §1-02 Note 5]

Subd. (m) added City Record Oct. 10, 1995 §44, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (n) added City Record Oct. 26, 2007 §17, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2000:

Recordkeeping

When a participant knows or has reason to believe that goods and/or services to be provided will exceed $1000 in value, a new rule requires the participant to keep a copy of the written contract or a written record that includes the name and address of the vendor and a description of the goods or services the vendor is expected to provide. Rule 4-01(1).

2. Statement of Basis and Purpose in City Record Mar. 27, 2001: Accounting and Auditing 1. **Records to be Kept for Checks Signed by an Authorized Agent of the Contributor** (Rule 4-01(b); 5-01(d)(19)) The rule codifies Advisory Opinion No. 2000-3 (September 14, 2000) which established the additional documentation a participating candidate must provide the Board for each contribution in the form of a check signed by the contributor's authorized agent, rather than by the contributor, for which public matching funds are claimed. Under the rule, matching funds may only be claimed for contributions in the form of a check signed by an authorized agent of the contributor if the candidate provides a copy of the check upon which is printed the name of the actual contributor; and a document, signed by the contributor which indicates: (1) that the person signing the check is authorized to do so; (2) the date and amount of the contribution; and (3) the committee's name.

3. Statement of Basis and Purpose in City Record Mar. 27, 2001: 2. **Cash and Money Order Contribution Cards (Rule 4-01(b)(3))** The rule amends the requirements for cash and money order contribution cards. Under the rule, contribution cards would be required to include the statement "I hereby affirm that this contribution is being made from my personal funds, is not being reimbursed in any manner, and is not being made as a loan." The statement is required to appear above the entry for the contributor's signature. 3. **Intermediated Contributions** (Rule 4-01(b)(5)) The rule is intended to assist the Campaign Finance Board in auditing contributions made to candidates through intermediaries. Under the rule, in each instance in which a candidate accepts a set of contributions from an intermediary, for those contributions to be valid, the candidate must maintain a written record, or "intermediary statement," setting forth the intermediary's name, address, employer and business address as well as the names of the contributors and the amounts contributed. The record must include the statement: "I hereby affirm that I did not, nor to my knowledge, did anyone else, reimburse any contributor in any manner for his or her contribution, and none of the submitted contributions was made by the contributor as a loan" and must be signed by the intermediary. In addition, the rule mandates that the intermediary card contain the following statement: "The making of false statements in this document is punishable as a class E felony pursuant to §175.35 of the Penal Law and/or a Class A misdemeanor pursuant to §210.45 of the Penal Law."

4. Statement of Basis and Purpose in City Record Aug. 7, 2002: 1. **Requirements for Contribution Card for Cash and Money Order Contributions** (§4-01(b)(3)) The amendment to §4-01(b)(3) clarifies the required elements of the contribution card that must be filed for each cash and money order contribution received. It also requires the contributor to indicate the date on which he or she signed the card, and provides that participants may use a single card to satisfy the requirements of both §4-01(b)(3) and the amendments to §5-01(n) described below. This change to require the date on which the card is signed is made in response to instances in past elections where the Board has received contribution cards where signatures and dates have appeared inconsistent, giving rise to inferences of fraud. The Board believes that this increased contemporaneous recordkeeping requirement will assist the Board's efforts to police against fraud. 2. **Documenting Credit Card Contributions** (§§4-01(b)(6), 3-04(f)) Advisory Opinion No. 1994-2 and a 2000 Board publication entitled "Claiming Matching Funds for Credit Card Contributions" require participants who wish to accept contributions made through credit cards to maintain and submit to the Board certain documents, including an "authorization card" for each contribution that is signed by the contributor. New §4-01(b)(6) codifies this record-keeping requirement, and new §3-04(f) requires the submission to the Board of the authorization cards and other specified records for any credit card contribution claimed to be matchable with public funds. These rules do not create any new obligations.

5. Statement of Basis and Purpose in City Record July 20, 1999: Recordkeeping Recordkeeping requirements for bills, deposit slips, checks, fundraising events, and advances are simplified. Rule 4-01. The requirement for fundraising agent records is repealed as redundant. Rule 4-01(l). A matchable contribution claim will be invalidated if the participant fails to provide a record for the contribution when requested by the Board. Rule 5-01(d)(15).

6. Statement of Basis and Purpose in City Record Oct. 10, 1995: Record keeping (R. 4-01(b), (k)) Participating candidates are no longer required to group monetary instruments with associated deposit slips if they have an alternative method that shows, in a manner that similarly facilitates expenditious review, when the receipts were deposited. The rules require participating candidates to keep signed contributor cards for contributions made by money order and copies of campaign advertisements and literature (following a State law requirement). Record keeping requirements for fund raising agents, campaign offices, and advances are described elsewhere in this summary.

7. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Receipts** (R. 4-01(b)(3)) The rules mandate that cash and money order contribution records have separate lines for the contributor's name, the contributor's signature, and the committee's name.

8. Statement of Basis and Purpose in City Record Oct. 18, 1996: Recordkeeping **Bank Records** (R. 4-01(b)(1) and R. 4-01(f)) The rules move the requirement that deposit slips be kept in chronological order from R. 4-01(f)(3) to R. 4-01(b)(1).

9. Statement of Basis and Purpose in City Record May 5, 2003: Auditing and Accounting 2. **"Best Efforts" for Unreported Contributor Information** (§4-01(b)(4)) The amendment repeals §4-01(b)(4) to eliminate the requirement that participants maintain a record of efforts made to obtain missing contributor information.

Rules of the City of New York

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

52 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-02 Participant's Record keeping Duties. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 5, 2003 eff. June 4, 2003. [See Note 1]

Section amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record May 5, 2003:

Recordkeeping Duties (§4-02)

The amendment repeals §4-02 which provides the standard for demonstrating best efforts to obtain missing disclosure information, in light of the change in the reporting standard contained in Local Law No. 12 of 2003.

Rules of the City of New York

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

52 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-03 Record Retention.

(a) **Six-year retention period.** The candidate shall retain all records and documents required to be kept under §4-01 for 6 years after the date of the last election to which the records or documents relate.

(b) **Custodian and location of Records.** At the time of the filing of the filer registration form and/or certification, the candidate shall notify the Board, in writing, of the name, address, e-mail address, and telephone number of the person who is the custodian for the candidate's records and documents for an election and the location of those records and documents. Thereafter, for 6 years after the date of the last election to which the records or documents relate, the candidate shall notify the Board, in writing, of any change of custodian, of the custodian's address, e-mail address, or telephone number, and of the location of the candidate's records and documents, no later than the deadline for filing the next disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Feb. 20, 2009 §7, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (b) amended City Record May 15, 2008 §12, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (b) amended City Record Aug. 7, 2002 Part E, eff. Sept. 6, 2002. [See Note 1]

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

3. **Record Retention** (§4-03(b))

The amendment requires each participant to notify the Board in writing, upon certification and on an ongoing basis, of the location of the participant's records and documents for an election and the name, address, and telephone number of the person who is the custodian of such records and documents, whether the custodian is the treasurer or some other person. Under the current rule, no notification is required if the custodian is the treasurer.

Rules of the City of New York

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

52 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-04 Assistance to Candidates; Records.

In order to promote compliance with the requirements of the Act and these Rules, the Board's staff shall offer assistance to candidates in developing campaign procedures for gathering campaign finance information and keeping records and shall, to the extent feasible, provide model recordkeeping journals and forms. A participant's failure to keep records required by this Chapter, or provide to the Board, upon its request or as required by these Rules, records or other information, may result in a determination that matchable contribution claims are invalid pursuant to §5-01(d)(17); a determination pursuant to §3-710(2)(b) of the Code that the participant made expenditures for purposes other than qualified campaign expenditures, including a determination whether the participating candidate shall be required to personally repay such expenditures to the Board; a determination pursuant to §3-710(2)(c) of the Code that the participant must return excess funds to the Board due to the failure to demonstrate that the participant made expenditures in furtherance of his or her nomination or election equal to or greater than the total of contributions, other receipts, and payments from the fund received; the withholding of public funds pursuant to §5-01(e); and the assessment of penalties pursuant to §§3-710.5 and 3-711 of the Code.

HISTORICAL NOTE

Section amended City Record Oct. 23, 2008 §7, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-05 Audits.

(a) The Board shall conduct desk and field audits of participants, limited participants, and non-participants, regardless whether the candidates receive public funds. Field audits may be conducted before or after an election, as the Board deems appropriate. In conducting audits, the Board may use random sampling of data and other analytic techniques, as appropriate. The Board shall conduct campaign audits in accordance with generally accepted government auditing standards.

(b) The Board shall issue all draft and final audit reports in accordance with the deadlines provided in §3-710(1)(a) and (b) of the Code subject to any applicable exceptions to those deadlines provided in §3-710(1)(d), (e), and (f) of the Code; provided, however, that the Board shall not be required to provide the candidate a final audit report within fourteen months after the deadline for submission of the final disclosure report for the covered election for city council races and borough-wide races, or within sixteen months after the deadline for submission of the final disclosure report for the covered election for citywide races, unless the candidate or the candidate's treasurer or campaign manager completed an audit training provided by the Board prior to the applicable deadline provided in Rule 2-12(b).

HISTORICAL NOTE

Section amended City Record Oct. 26, 2007 §18, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record June 18, 2009 §4, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (b) amended City Record May 15, 2008 §13, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

2. **Auditing** (§4-05)

This amendment provides that the Board shall issue all draft audit reports before the end of the year following an election, to the extent practicable. After the 2001 elections, some participants questioned Board staff about the length of the post-election audit process. Although the Board staff already has issued more than half of all draft audits for the 2001 elections, despite losing several months of time due to the staff's displacement as a result of the September 11 attacks on the World Trade Center, the Board believes this amendment will better inform participants about the timing of the audit process.

Rules of the City of New York

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

52 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 4 ACCOUNTING AND AUDITING

§4-06 Prospective Participants. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section amended City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See §5-01 Note 2]

Section amended City Record July 20, 1999 §50, eff. Aug. 19, 1999. [See T52 §3-02 Note 1]

Section added City Record May 19, 1994 eff. June 18, 1994.

Rules of the City of New York

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

52 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-01 Payment Procedure.

(a)(1) **Board determines eligibility.** No payments from the Fund shall be made to a participant unless the Board has determined that a candidate has met all eligibility requirements of the Act and these rules. The Board shall notify the participant of a determination of ineligibility.

(2) **Public funds cap.** (i) The Board shall determine, pursuant to §3-705(7)(a) of the Code, whether a participant is opposed by another candidate who has spent or contracted or obligated to spend, or received in loans or contributions, or both, an amount which in the aggregate exceeds one-fifth of the expenditure limit applicable to the participant. Such determination shall be made pursuant to Rule 7-03.

(ii) Participants seeking additional public funds pursuant to §3-705(7)(b) of the Code must file a signed statement with the Board pursuant to §3-705(7)(b) no later than the due date for the disclosure statement immediately preceding the public funds payment for which the participant is seeking to receive the additional public funds; provided, however, that participants seeking to receive the additional public funds on the first date payments are made by the Board for a primary election, must file the signed statement with the Board no later than the day before the first date the Board of Elections conducts hearings on any ballot petition filed by any candidate seeking nomination for election in any primary occurring in the same election cycle for which the candidate is seeking nomination for election, without regard to whether such hearings are related to a petition filed by an opponent of the participant.

(3) **Small primaries.** (i) A participant on the ballot in one or more primary election(s) in which the number of persons eligible to vote for party nominees in each such election totals fewer than one thousand shall not receive public funds in excess of five thousand dollars for qualified campaign expenditures in such election or elections; provided,

however, that the foregoing limitation shall not apply to such participant if he or she is opposed in a primary election by (A) a participant who is not subject to such limitation or (B) a limited participant or non-participant who has spent or contracted or obligated to spend in excess of ten thousand dollars for such primary election. The Board shall determine whether a non-participant has exceeded such ten thousand dollar level pursuant to §7-03.

(ii) For the purposes of subparagraph (i), the number of persons eligible to vote for party nominees in a primary election shall be as determined by the Board of Elections for the calendar year of the primary election pursuant to §5-604 of the New York Election Law. If such determination for any primary election is not available from the Board of Elections as of the day before the due date for filing a certification pursuant to §3-703(1)(c) of the Code, the most recent determination by the Board of Elections of the persons eligible to vote for party nominees for the office for which such primary election is held shall be relied upon.

(4) **Non-competitive campaigns.** (i) Pursuant to §3-705(9) of the Code, a participating candidate who endorses or otherwise publicly supports his or her opponent for election shall not be eligible for public funds.

(ii) Pursuant to §3-705(10) of the Code, a participating candidate who loses the primary election but remains on the ballot for the general election shall be ineligible to receive public funds unless the candidate certifies to the Board that he or she will actively campaign for office, by measures including but not limited to raising and spending funds, seeking endorsements, and broadly soliciting votes.

(5) **Bonus determinations.** (i) Pursuant to §3-706(3)(a) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds half the applicable expenditure limit pursuant to §3-706(1)(a) of the Code, then:

(ii) such expenditure limit applicable to participating candidates and limited participating candidates in such election for such office shall be increased to one hundred fifty percent of such limit; and

(iii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of approximately seven dollars and fourteen cents for each dollar of matchable contributions, up to one thousand two hundred fifty dollars in public funds per contributor (or approximately $7.18 for each dollar of matchable contributions, up to six hundred twenty-five dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run off election shall receive public funds for such election pursuant to subdivision five of §3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in §3-706(1)(a) of the Code.

(iv) Pursuant to §3-706(3)(b) of the Code, where the Board has determined that a non-participating candidate has spent or contracted or has obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit pursuant to §3-706(1)(b) of the Code, then:

(v) such expenditure limit shall no longer apply to participating candidates and limited participating candidates in such election for such office; and

(vi) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of approximately eight dollars and fifty-seven cents for each dollar of matchable contributions, up to one thousand five hundred dollars in public funds per contributor (or approximately $8.62 for each dollar of matchable contributions, up to seven hundred fifty dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run off election shall receive public funds for such election pursuant to subdivision five of §3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in §3-706(1)(a) of the Code.

(b) **Preliminary review of disclosure statements.** (i) In order to make possible payment within four business days after receipt of disclosure statements, or as soon thereafter as is practicable, pursuant to §3-705(4) of the Code, the Board shall conduct a preliminary review of all disclosure statements filed and all receipts filed indicating proof of compliance with §12-110 of the Code. This preliminary review may be delayed if the participant fails to submit a disclosure statement, a receipt indicating compliance with §12-110 of the Code or information requested by the Board, or fails to submit a disclosure statement, a receipt indicating compliance with §12-110 of the Code or information requested by the Board by the date required by the Board, or submits a disclosure statement that fails to comply substantially with the requirements of the Act or these rules. A preliminary review may also be delayed for other reasons, including, but not limited to, consideration of whether a basis exists for an ineligibility determination, as described in subdivision (f). A delayed preliminary review may result in a delay in a payment determination, until such time as it is practicable and the Board is considering making payments based on matchable contributions claimed in disclosure statements actually received on or before a subsequent applicable due date.

(ii) After a participant has been informed that a matchable contribution claim has been deemed invalid or that the participant is ineligible for public funds, the participant shall not include in any petition or request to the Board any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

(c) **Basis for payments.** The amount paid to a participant shall be based upon the Board's review and audit of matchable contributions claimed and qualified campaign expenditures.

(d) **Validity of matchable contribution claims and projected rate of invalid claims.** The Board shall not make payment for any matchable contribution claim it determines or projects to be invalid. The Board shall consider the following factors in determining that matchable contribution claims are invalid and in projecting a rate of invalid matchable contribution claims:

(1) cash contributions from any one contributor that are greater than $100 in the aggregate, in violation of New York Election Law §14-118(2), or money order contributions from any one contributor that are greater than $100 in the aggregate;

(2) contributors who are individuals under the age of eighteen years or that are entities other than individuals;

(3) matchable contribution claims that would yield more than $1,050 in public funds per contributor (or $522 in the case of a special election);

(4) contributions that exceed the contribution limit applicable under the Act;

(5) contributor addresses that are not residential addresses within New York City;

(6) contributions for which information is omitted from or illegible in a disclosure statement;

(7) contributions made later than December 31 of the election year;

(8) contributions originally received for elections other than the election in which the candidate is currently a participant, as described in Rule 1-07;

(9) matchable contribution claims that exceed the gross amount of the contribution;

(10) contributions that were not received within the reporting period or that were made by post-dated check;

(11) (i) contributions totaling more than $99 for which a participant has not reported the contributor's occupation, employer, and business address;

(ii) contributions totaling less than $99 for which a participant is required to report the contributor's occupation, employer, and business address, pursuant to §3-03(c)(6)(ii), but has failed to do so;

(12) contributions that were returned to or not paid by the contributor;

(13) checks drawn by a person other than the contributor except checks signed by a contributor's authorized agent where the documentation required under §4-01(b)(2) has been maintained and provided;

(14) contributions that are otherwise not matchable contributions within the meaning of the Act;

(15) any information that suggests that a contribution has not been processed or reported in accordance with Program requirements;

(16) any other information that suggests that matchable contribution claims may be invalid;

(17) contributions for which a record required under Chapter 4 was not kept or provided upon request;

(18) contributions for which complete supporting documentation required by §3-04(a) has not been submitted;

(19) check or money order contributions made payable to entities other than the committee that has reported receiving the contribution;

(20) contributions that were made or accepted in violation of any federal, state, or local law;

(21) contributions received before May 12 in the year of the election that were not contemporaneously reported as matchable in disclosure statements or were reported in such statements that were not filed in a complete and timely manner;

(22) contribution checks drawn on business accounts, or accounts that bear indicia of being business accounts, such as the contributor's professional title;

(23) contributions purportedly from different contributors that were made by money orders bearing consecutive serial numbers or other markings indicating that they were purchased simultaneously;

(24) arithmetical errors in totals reported;

(25) contributions that were not itemized in a disclosure statement;

(26) transfers made to a political committee that is not authorized for an election in which the candidate is currently a participant, as described in §5-01(n)(1); and

(27) contributions required to be deposited into an account established for a run-off election, as provided in Rule 2-06(c);

(28) contributions from individuals, other than employees of the candidate's principal committee, who are vendors to the participant or individuals who have an interest in a vendor to the participant, unless the expenditure to the vendor is reimbursement for an advance. For the purposes of this rule, "individuals who have an interest in a vendor" shall mean individuals having an ownership interest of ten percent or more in a vendor or control over the vendor. An individual shall be deemed to have control over the vendor firm if the individual holds a management position, such as the position of officer, director or trustee; and

(29) contributions from individuals having business dealings with the city, as defined in §3-702(18) of the Code, and contributions from lobbyists as defined in §3-211 of the Code.

(e) **Withholding of public funds.** The Board shall withhold five percent of the amount of public funds payable to a participant until the final pre-election payment for any election in which the participant is eligible to receive public funds. In addition, the Board, in its discretion, may withhold a reasonable portion of the amount of public funds payable to a participant based upon:

(1) a projection of the rate(s) of invalid matchable contribution claims; and

(2) the participant's failure to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information.

(f) **Basis for ineligibility determination.** The Board shall determine whether public funds shall not be paid to a participant for reasons that include, but are not limited to:

(1) if there is reason to believe that the participant has committed a violation of the Act or these Rules;

(2) if the participant has failed to meet one of the eligibility criteria of the Act or these Rules;

(3) if the participant is required to repay public funds previously received, as described in Rule 5-03, or if the participant has failed to pay any outstanding claim of the Board for the payment of civil penalties or the repayment of public funds against such participant or his or her principal committee or a principal committee of such participant from a prior covered election, provided that the participant has received written notice of the potential payment obligation and potential ineligibility determination in advance of the certification deadline for the current covered election or an opportunity to present reasons for his or her eligibility for public funds to the Board;

(4) if the participant fails to submit a disclosure statement required by these rules;

(5) if the participant fails to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information that verifies campaign activity;

(6) if previous public fund payments to the participant for the election equal the maximum permitted by the Act;

(7) if the participant or an agent of the participant has been found by the Board to have committed fraud in the course of Program participation or to be in breach of certification pursuant to Rule 2-02;

(8) if the participant fails to file the receipt indicating compliance with §12-110 of the Code, as required pursuant to §3-703(1)(m) of the Code and Rule 3-11;

(9) if the participant endorses or publicly supports his or her opponent for election pursuant to §3-705(9) of the Code; or

(10) if the participant loses in the primary election but remains on the ballot for the general election and fails to certify to the Board, as required by §3-705(10) of the Code, that he or she will actively campaign for office in the general election, or if the participant certifies to the Board that he or she will actively campaign for office in the general election but thereafter fails to engage in campaign activity that shall include but not be limited to, raising and spending funds, seeking endorsements, and broadly soliciting votes.

(g) **Payment is not final determination.** Payments of public funds pursuant to this Rule shall not constitute the Board's final determination of the amount, if any, for which the participant qualifies. The Board shall provide specific notice of any such final determination.

(h) **Notice to participants.** The Board shall notify participants of any difference between the amount claimed and amount paid. Subsequent payments may be, adjusted upward or downward to reflect further review and auditing of previous matchable contribution claims.

(i) **Pre-election payments.** (1) Pursuant to §3-709(5) and (6) of the Code: (i) no public funds shall be paid to participants in a primary election any earlier than two weeks after the last day to file designating petitions for such primary election; (ii) no public funds shall be paid to participants in a runoff primary election or general election any earlier than the day after the day of the primary election held to nominate candidates for such election; and (iii) no public funds shall be paid to participants in a runoff special election held to fill a vacancy any earlier than the day after the day of the special election for which such runoff special election is held.

(2) Pursuant to §3-703(1)(a) and (5) of the Code, public funds are not payable to a participant who has not met the legal requirements to have his or her name on the ballot or who is unopposed. To enable the Board to ascertain whether a candidate has met the legal requirements to be on the ballot and is opposed, the Board shall first make payments in an election after the Board of Elections conducts hearings on the ballot petitions filed in that election except if the Board determines that delays in Board of Elections proceedings or determinations warrant first making payments earlier.

(3) The Board shall schedule at least three payment dates in the thirty days prior to a covered election, and the Board shall provide each participant a written determination specifying the basis for any payment or non-payment. As provided in §5-02(a), the participant may petition the Board in writing for a reconsideration of any such payment or non-payment determination, prior to the election, and such reconsideration shall occur within five business days of the filing of such petition.

(j) **Flat grants in special circumstances.** Pursuant to §3-705(5)(a) of the Code, the Board shall pay to a participant in a runoff primary election or runoff special election an amount equal to twenty-five cents for each one dollar of public funds paid to the participant for the preceding election. The amount paid pursuant to this subdivision may be adjusted to reflect further review and auditing of matchable contribution claims for the preceding election. The Board shall make payments pursuant to this subdivision within four business days after the date of the preceding election or as soon thereafter as practicable.

(k) **Post-payment audits.** All determinations by the Board of eligibility and payment are subject to post-payment audit and final readjustment.

(l) **Characterization of payments as for the primary or general election.**

(1) If a participant is on the ballot and has an opponent on the ballot in both a primary and the general elections, payments made after the primary election will be characterized initially as follows:

(i) As a primary election payment, if the payment is made on the basis of contribution and expenditure information reported in or before the disclosure statement due 10 days after the primary election, except as otherwise provided in subparagraph (ii).

(ii) As a general election payment, to the extent that any further primary election payments would exceed a maximum applicable in the primary election pursuant to the Act.

(iii) As a general election payment, if the payment is made on the basis of contribution and expenditure information reported in disclosure statements due later than 10 days after the primary election.

(2) If the Board determines that payments characterized initially as either primary or general election payments were, in fact, used for qualified campaign expenditures incurred in the other election, the payments will be recharacterized accordingly, and additional payments may be made or repayments required, if appropriate. The total public funds used for qualified campaign expenditures in a single election may not exceed the maximum applicable pursuant to §3-705(2) of the Code.

(m) **Post-election payments.** After an election the Board may defer payment determinations for a participant until the completion of its audit of the participant. The Board shall not make payments based upon disclosure statement

amendments or resubmissions filed (i) after December 31 in an election year, including but not limited to amendments or resubmissions of the disclosure statement due the first January 15 after the election, or (ii) after the final disclosure statement in the case of a special election; provided however, that the Board may make payments based upon such amendments or resubmissions solely if they are made in response to invalid matching claims reports to which the Board has requested a response after December 31 in an election year or after the final special election disclosure statement, as the case may be.

(n) **Deductions from payments.**

(1) The following will be deemed to consist entirely of contributions claimed to be matchable:

(i) transfers and other disbursements from a political committee that is involved in an election in which the candidate is currently a participant to a political committee that is not involved in that election;

(ii) expenditures made to pay expenses for or debt from a previous election, including repayments of public funds owed to the Board for a previous election;

(iii) contributions to other political committees that do not meet the requirements provided in §3-705(8) of the Code for contributions that shall not be a basis for reducing public funds payments; and

(iv) loans to or spending for other candidates (including joint expenditures to the extent such expenditures benefit another candidate, and independent expenditures) and loans to or spending for political party committees and political clubs, that are not reimbursed within 30 days, provided that if the participant demonstrates that the expenditure was for a tangible item that directly promotes the participant's election, such as an advertisement in a fundraising journal, this subdivision shall not apply to the fair market value of that item. An amount equal to the amount of public funds the participant is otherwise eligible to receive for such matchable contribution claims shall be deducted from the public funds paid to the participant.

(2) Notwithstanding paragraph (1) above, disbursements otherwise subject to a deduction pursuant to paragraph (1) shall not be subject to such deduction if:

(i) such disbursements are made out of a segregated bank account;

(ii) at no time does such segregated bank account contain any funds other than contributions received by the participant and deposited directly into such account pursuant to this Rule, and bank interest paid thereon;

(iii) funds deposited into the segregated bank account are not used for any purpose other than (I) disbursements governed by paragraph (1) above or (II) payment of bank fees associated with the segregated bank account;

(iv) contributors whose contributions are deposited into such segregated bank account have confirmed in writing, pursuant to §4-01(b)(7), that they understand that these contributions will only be used for such disbursements and will not be matched with public funds;

(v) copies of such written confirmations are submitted to the Board by the due date for the disclosure statement in which such contributions are required to be reported pursuant to these Rules;

(vi) copies of checks for each disbursement out of such segregated bank account are submitted to the Board by the due date for the disclosure statement in which such disbursements are required to be reported pursuant to these Rules;

(vii) a copy of each bank statement for such segregated bank account is submitted to the Board as soon as reasonably practicable after it is available to the campaign from the bank; and

(viii) for each individual contribution deposited into a segregated bank account, and each disbursement out of such

account, the participant has complied with all other applicable provisions of the Act and these Rules, including but not limited to the record keeping and reporting provisions.

(3) Section 1-09 shall be applicable for the purposes of determining the date of receipt by the Board of documents submitted pursuant to this Rule.

(4) Participants may not deposit a portion of a particular contribution into the segregated bank account provided for in paragraph (2), but must rather deposit the entire contribution into the account.

(5) Contributions deposited into a segregated bank account pursuant to this Rule will not be matched with public funds.

(6) A participant who establishes a segregated bank account pursuant to this Rule but fails to comply with any provision of paragraph (2) or (4) above shall no longer be entitled to the exception from paragraph (1) contained in paragraph (2) above.

(7) Funds deposited into, and disbursements made from a segregated bank account established and maintained in compliance with this Rule for the purpose of making expenditures to pay expenses for or debt from a previous election, including repayments of public funds owed to the Board, will not be considered to be raised or spent for the current covered election for purposes of the participant's expenditure limit and unspent campaign funds calculation.

(o) **Use of final payment.** Before the Board makes final payment, the participant shall submit to the Board bills or other documentation of outstanding debt for which the final public funds payment will be used. Within 60 days after the final public funds payment, the participant must demonstrate that the public funds were used to pay such outstanding debt or shall repay the public funds to the Board.

(p) **Responding to invalid matching claims reports.** In the event that the Board concludes that one or more of a participant's matchable contribution claims are invalid, a participant responding to the Board's report shall do so by the March 15 following the election or 60 days after receiving the report, whichever is later. In the case of a special election, a participant shall respond to an invalid matching claims report no later than 60 days after receiving the report.

(q) **Ballot disqualification by Board of Elections; candidate not opposed on the ballot.** The Board will not make payment to any participant disqualified from the ballot by the Board of Elections or by a court, or to any participant for an election in which all other candidates have been disqualified from the ballot by the Board of Elections or by a court, until after such participant or other candidate, as the case may be, is restored to the ballot by a subsequent determination by a court of competent jurisdiction. A participant who appears as the only candidate on the ballot in an election shall not be eligible to receive public funds, notwithstanding any write-in candidates in that election, except as otherwise provided in Rule 5-02(b).

(r) **Reduction in maximum public funds payable.** Pursuant to §3-705 of the Act, the maximum amount of public funds a participant may otherwise be eligible to receive will be reduced by the sum of the following:

(1) any public funds retained by the Board in lieu of civil penalties;

(2) any public funds retained by the Board in lieu of funds the participant is required to pay back to the Fund pursuant to the Act;

(3) any public funds withheld pursuant to Rule 5-01(e)(2); and

(4) pursuant to §3-703(1-b) of the Code, an amount equal to the total unreturned contributions in excess of the limitations applicable to persons having business dealings with the city.

(s) **Approval by Board subject to correction of limited, isolated, and easily corrected compliance issues.** The

Board, in its discretion, may approve a public funds payment to a participant, notwithstanding that the participant has been determined by the Board to be ineligible to receive public funds because of limited, isolated, and easily corrected compliance issues. Such approval of public funds disbursement shall be conditioned upon a satisfactory demonstration by the participant that it has taken action, as specified by the Board and within a period of time specified by the Board, to comply with the Act and these rules. The participant shall have the burden of demonstrating to the Board that it has fully complied with the Board's requirements.

(t) **Payment of expenditures made in connection with litigation with public funds.** A participating candidate and his or her principal committee may not use public funds to pay expenditures made in connection with any action, claim, or suit before any court or arbitrator.

(u) **Payment by Electronic Funds Transfer.** All payments of public funds shall be by electronic funds transfer unless the Board determines, in its sole discretion, to use an alternative payment method. In order to receive prompt payment, the participating candidate shall provide the Board with a voided check and such additional information as shall be required by the Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (a) par (2) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (3) subpar (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (4) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (4) added City Record Oct. 26, 2007 §19, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (a) par (5) amended City Record May 15, 2008 §14, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (a) par (5) added City Record Oct. 26, 2007 §19, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 7] This amendment inadvertently omitted the amendment to subd. (b) by City Record May 21, 2004.

Subd. (b) par (i) amended City Record May 21, 2004 eff. June 20, 2004. [See T52 §3-11 Note 1]

Subd. (c) relettered and amended (former subd. (d)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) repealed & added City Record Aug. 7, 2002 Part F Subpart 2, eff. Sept. 6, 2002. [See Note 2]

Subd. (d) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (2) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (3) amended City Record May 15, 2008 §15, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (3) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (11) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) par (18) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See T52 §1-08 Note 4]

Subd. (d) par (21) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) par (27) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (28) amended City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) par (29) amended City Record May 15, 2008 §15, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (d) par (29) added City Record Oct. 26, 2007 §20, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Oct. 23, 2008 §8, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (f) amended City Record May 21, 2004 eff. June 20, 2004. [See T52 §3-11 Note 1]

Subd. (f) pars (1), (2), (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) relettered (former subd. (f)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (h) relettered (former subd. (g)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (i) amended City Record Feb. 20, 2009 §8, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (i) amended City Record Oct. 23, 2008 §9, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (i) amended City Record Oct. 26, 2007 §21, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (j) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (l) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (m) amended City Record Aug. 7, 2002 Part F Subpart 5, eff. Sept. 6, 2002. [See Note 2]

Subd. (n) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (n) par (7) added City Record Feb. 20, 2009 §10, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (o) amended City Record July 20, 1999 §55, eff. Aug. 19, 1999. [See Note 1]

Subd. (p) added City Record Oct. 18, 1996 §29, eff. Jan. 1, 1997. [See Note 5]

Subd. (q) amended City Record Aug. 7, 2002 Part F Subpart 7, eff. Sept. 6, 2002. [See Note 2]

Subd. (r) amended City Record Oct. 23, 2008 §10, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (r) added City Record Aug. 7, 2002 Part F Subpart 8, eff. Sept. 6, 2002. [See Note 2]

Subd. (t) added City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 7]

Subd. (u) added City Record May 15, 2008 §16, eff. June 14, 2008. [See T52 §1-02 Note 7]

DERIVATION

Subd. (b) amended City Record Aug. 7, 2002 Part F Subpart 1, eff. Sept. 6, 2002. [See Note 2]

Subd. (b) amended City Record July 20, 1999 §51, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) amended City Record Oct. 10, 1995 §45, eff. Nov. 9, 1995. [See T52 §2-01 Note 2]

Subd. (d) relettered and amended (former subd. (c)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) par (11) amended City Record Dec. 23, 2004 eff. Jan. 22, 2005. [See T52 §3-03 Note 5]

Subd. (d) par (11) amended City Record May 5, 2003 eff. June 4, 2003. [See Note 6]

Subd. (d) par (12) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (15) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §52, eff. Aug. 19, 1999. [See T52 §4-01 Note 5]

Subd. (d) par (17) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See Note 4]

Subd. (d) par (19) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See §4-01 Note 2]

Subd. (d) par (21) amended City Record May 5, 2003 eff. Dec. 31, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (21) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (22) amended City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (23) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (23) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (24) [This par was repealed by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §52, eff. Aug. 19, 1999. [See Note 1]

Subd. (d) par (24) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §7-05

Note 1]

Subd. (d) par (24) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (24) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (25) amended City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §7-05

Note 1]

Subd. (d) par (25) amended City Record Oct. 24, 1994 eff. Nov. 23, 1994.

Subd. (d) par (25) added City Record May 19, 1994 eff. June 18, 1994.

Subd. (d) par (26) added City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (27) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (d) par (27) added City Record Oct. 10, 1995 §46, eff. Nov. 9, 1995. [See T52 §3-03 Note 2]

Subd. (d) par (28) added City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part F Subpart 3, eff. Sept. 6, 2002. [See Note 2]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) amended City Record Aug. 7, 2002 Part F Subpart 4, eff. Sept. 6, 2002. [See Note 2]

Subd. (f) added City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) undesignated final par repealed and added City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (f) undesignated final par amended City Record Oct. 10, 1995 §47, eff. Nov. 9, 1995.

Subd. (i) amended City Record July 20, 1999 §53, eff. Aug. 19, 1999. [See Note 1]

Subd. (i) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (m) amended City Record Oct. 18, 1996 §28, eff. Jan. 1, 1997. [See Note 5]

Subd. (m) added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (n) amended City Record Aug. 7, 2002 Part F Subpart 6, eff. Sept. 6, 2002. [See Note 2]

Subd. (n) amended City Record July 20, 1999 §54, eff. Aug. 19, 1999. [See Note 1]

Subd. (n) added City Record Oct. 10, 1995 §48, eff. Nov. 9, 1995. [See Note 4]

Subd. (o) added City Record Oct. 10, 1995 §48, eff. Nov. 9, 1995. [See Note 4]

Subd. (q) added City Record July 20, 1999 §56, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Public Funds

New use restrictions are codified. Rule 1-08(g), following Local Law No. 48 of 1998 amendments to Administrative Code §3-704.

To receive public funds, participants must meet the legal requirements to be on the ballot and be opposed. Thus:

· The Board will first make public funds payments after the Board of Elections conducts hearings on ballot petitions, except if the Board determines that delays in Board of Elections proceedings warrant making first payments earlier. Section 5-01(i).

· Public funds payments will not be made to a participant disqualified from the ballot by the Board of Elections, or all of whose opponents are disqualified by the Board of Elections, until the participant or opponent is restored to the ballot by a court. Section 5-01(q).

· Payments will not be made for a primary election held because of an opportunity to ballot petition in which the participant is the only candidate on the ballot (Advisory Opinion No. 1999-9). Section 5-01(q).

· A participant temporarily on the ballot or opposed due to a Board of Elections or court determination, but ultimately disqualified from the ballot or unopposed, may submit a petition to the Board for payment (codifying Advisory Opinion No. 1997-4 (June 12, 1997)). The petition is due within 30 days after the final disqualification. Section 5-02(b).

Deductions from public funds payments will not be made for expenditures to other candidates or committees for the fair market value of a tangible item directly promoting the participant's election, such as an advertisement in a journal. Advisory Opinion No. 1997-12 (October 9, 1997). When a disbursement is presumed to consist of matchable contributions, however, the amount to be deducted is equal to the amount of public funds otherwise due to the participant for such matchable contribution claims (at the 4:1 or 5:1 payment rate, whichever is applicable). Section 5-01(n).

Before the Board makes a final public funds payment for an election, the participant will have to submit bills or other documentation of the outstanding debt for which the payment will be used. Documentation of the final use would be due within 60 days after final payment. Section 5-01(o).

Unspent campaign funds will be due to be paid to the Board on the closing date of the final disclosure statement. Section 5-03(e), reflecting amendments to Administrative Code §3-710(2)(c).

Before repaying unspent campaign funds, participants will be permitted to make certain post-election expenditures for routine, nominal wind-up costs. Section 5-03(e)(2)(ii), codifying Advisory Opinions Nos. 1989-56 (December 19, 1989); 1992-1 (January 21, 1992); 1997-13 (November 25, 1997); and 1997-14 (December 9, 1997).

The Board will take certain steps to safeguard the administration of the special Public Fund and assure candidates that sufficient public funds will be available to make all payments required by the Campaign Finance Act and guaranteed by the City Charter. Section 5-04.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: Public Funds 1. **Submission of Documentation to Board Regarding Payment of Public Funds** (§5-01(b)) In the 2001 election cycle, some participants attempted to submit documents to the Board regarding their eligibility to receive public funds or the validity of their matchable contribution claims, even though they had not previously submitted such documents to the staff of the Board for review. The amendment to §5-01(b) prohibits a participant from submitting a document to the Board relating to a payment issue unless the document was previously submitted to the staff or was previously unavailable. The amendment also confirms that the Board will not make payments within four business days, pursuant to §3-705(4) of the Code, based on submissions that are not filed in a timely manner. 2. **Invalid Matching Claims** (§§5-01(d), 1-11, 4-06) The amendment to §5-01(d) updates the rule to reflect the factors considered by the Board in determining whether to invalidate claims for matching funds. The amendment also reorders the reasons for invalidating matching claims to correspond to the list of invalid claim codes in the invalid matching claims report mailed to candidates. Paragraphs (18), (19), and (23) are new and confirm that: (1) matchable contribution claims submitted without documentation are invalid; (2) contributions made payable to entities other than the committee that has reported receiving the contribution are not matchable; and (3) money orders having consecutive serial numbers will be invalidated for matching purposes. Paragraph (22) is amended to clarify that the Board may consider a contribution check drawn on an account that bears indicia of being a business account, as a factor in determining that a matching contribution claim is invalid. This change does not create any new obligations for participants, but merely clarifies that the burden is on the participant to establish that checks appearing to come from businesses in fact come from individuals. Nonetheless, the Board staff anticipates issuing guidance to participants in the 2003 elections as to how to properly claim matching funds for checks bearing indicia of business accounts that are actually from individuals. Paragraph (3) is amended to clarify that matchable claims may be invalidated pursuant to the subsection if they would yield more than $1,000 in public funds; a corresponding amendment is also made to §3-04(a) (see Reporting Requirements paragraph 6 above). The remaining paragraphs are renumbered and redrafted to eliminate redundancies and clarify language. 3. **Withholding a Portion of Public Funds** (§5-01(e)) The amendment to §5-01(e) clarifies the reasons for which the Board may withhold portions of public funds payments, and distinguishes this subdivision from §5-01(f), which addresses a participant's ineligibility to receive public funds. 4. **Ineligibility for Public Funds** (§5-01(f)) The amendment to §5-01(f) confirms that the Board may determine a candidate to be ineligible to receive public funds because, among other reasons, the participant has failed to file a disclosure statement or supporting document that is required under the rules, or has failed to provide any other information requested by the Board to verify campaign activity that has been reported in disclosure statements. The amendment also deletes from §5-01(f) the final sentence of the rule that addresses a possible reduction in the maximum amount of public funds, and moves this provision to a new §5-01(r). 5. **Post-Election Payments** (§5-01(m)) The amendment clarifies that invalid matching claims reports received after December 31 of an election year are not covered by the prohibition on making payments on certain disclosure statement filings received after that date. 6. **Deductions from Payments** (§§5-01(n), 2-06, 3-05, 4-01(b)) Disbursements governed by §5-01(n) are hybrid cash flows, actions that the Board recognizes are routinely made by participants but that do not necessarily directly benefit their election. The Board does not want to prevent participants from making these disbursements, but at the same time the Board does not want these disbursements made with or subsidized by public funds. Consequently, the amendment to §5-01(n) has the following purposes: to provide a safe harbor from the deductions contained in §5-01(n); to protect the Public Fund from subsidizing these disbursements; to prevent commingling of funds used for these disbursements with other funds; and to lay to rest any misconception regarding the applicability of the deduction contained in the Rule. Thus, the amendment permits participants to avoid the deduction by segregating certain contributions in a separate account. Funds from this account will not be matched with public funds and will only be used for disbursements that would otherwise be subject to a §5-01(n) deduction. The contributor must confirm in writing that he or she knows that the participant will use the contribution in this manner. The amendment also includes contributions from participants to political clubs within the ambit of §5-01(n). The Rule currently only includes contributions to candidates and to political party committees (defined in Advisory Opinion No. 1997-12 (October 7, 1997) as party committees and constituted committees, each as defined in the New York State Election Law). However, contributions to political clubs implicate the same concerns. 7. **Ineligibility for Payment Due to Opponent's Disqualification by Courts** (§5-01(q)) Pursuant to §3-703(1)(a) and (5) of the Code, a participant in the Campaign Finance Program is eligible to receive public funds only if he or she is on the election ballot and is opposed in that election by another candidate. The current version of

§5-01(q) provides that a participant who is disqualified from the ballot by the New York City Board of Elections ("BOE"), or whose opponents on the ballot are disqualified by the BOE, is ineligible for payment. The amendment confirms that, in addition, a participant who has been disqualified from the ballot by a court, or whose opponents have been disqualified from the ballot by a court, is not eligible for public funds. The amendment clarifies that the opposition requirement extends to both primary and general election candidates. 8. **Reduction in Maximum Public Funds Payable** (§5-01(r)) The final sentence of §5-01(f), providing for a possible reduction in the maximum amount of public funds payable, is deleted and moved to a new §5-01(r).

3. Statement of Basis and Purpose in City Record Jan. 15, 2003: **Approval of Public Funds Payments Subject to Correction of Limited, Isolated, and Easily Corrected Compliance Issues** (Rule 5-01(s)) During the 2001 election cycle, the Board on several occasions approved public funds payments to campaigns subject to resolution of limited, isolated, and easily corrected compliance issues. Once the campaigns had demonstrated to the Board that they were in compliance, the public funds were released. New Rule 5-01(s) codifies the Board's current practice.

4. Statement of Basis and Purpose in City Record Oct. 10, 1995: Public Funds **Reasons for Reduced Payments** (R. 5-01(d)(17), (n)) The rules codify or recodify the following reasons for reducing public funds payments to participating candidates: transfers to a committee not involved in the current election (from R. 3-03(c)(2)(iii)); expenditures to pay expenses from a previous election (from Advisory Opinion No. 1993-2 (February 17, 1993)); and contributions or loans to or expenditures for other candidates or political party committees that are not refunded within 30 days. **Final Payment** (R. 5-01(o)) Under the new rules, within 30 days after the final public funds payment to a participating candidate for an election, the participating candidate must demonstrate that the payment was used to pay previously reported outstanding debt. Otherwise, the final payment must be returned to the Board.

5. Statement of Basis and Purpose in City Record Oct. 18, 1996: Public Funds Payments **Responding to Invalid Matching Claims Reports** (R. 5-01(p)) Under the rules, a participant responding to an invalid matching claim report is required to respond by the March 15 following the election or 60 days after receiving the report, whichever is later. **Post-election Payments** (R. 5-01(m) and R. 1-08(g)) Under the rules, a deadline is established which prohibits payment of public matching funds based upon amendments to and resubmissions of a disclosure statement after a certain date. Specifically, payments cannot be based upon any disclosure statement amendments or resubmissions that are filed after December 31 after the election. Furthermore, participants are prohibited from receiving any public matching funds based upon amendments to and resubmissions of the January 15 filing following an election. The new rules make clear that the maximum amount of public funds a participant may receive will be reduced by any civil penalties imposed pursuant to the Act, any money the participant is required to pay back to the Board pursuant to the Act, and any public funds withheld based upon the participant's failure to file with the Board required or requested information.

6. Statement of Basis and Purpose in City Record May 5, 2003: Public Funds 1. **Eligibility to Receive Public Funds** (§5-01(a)) Local Law No. 12 of 2003 provides that the amount of public funds payable to a participant shall be limited to 25% of the maximum public funds payment otherwise payable under Administrative Code §3-705(2) unless the participant: (i) is opposed by another participant who has qualified to receive public funds; (ii) is opposed by a candidate who has spent or contracted or obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit; or (iii) submits a signed statement attesting to the need and stating the reason for additional public funds, which statement the Board shall publish at the time the additional public funds are paid, including on its Web site. **See** Administrative Code §3-705(7). With the exception of the first public funds payment in an election, pre-election public funds payments generally are made four business days after a disclosure statement filing deadline. The amendments provide that participants who seek to obtain additional public funds on these public funds payment dates by submitting a signed statement, must submit such statement to the Board by the disclosure statement filing deadline immediately preceding the public funds payment for which the participant is seeking to receive the additional public funds. Pursuant to Administrative Code §3-709(5) the first public funds payment in a primary election is made no earlier than two weeks after the last day to file designating petitions with the Board of Elections. The Campaign Finance Board, however, does not make public funds payments until after the Board of Elections conducts hearings on these petitions, unless this would cause undue delay. Section

5-01(i). These hearings are typically held beginning in late July. Because there is no disclosure statement due immediately preceding this first payment, the amendments provide that participants who seek to obtain additional public funds on the first payment date by submitting a signed statement must submit such statement to the Campaign Finance Board by the day before the first date the Board of Elections conducts hearings on any ballot petition filed by any candidate seeking nomination for election in any primary occurring in the same election cycle in which the participant is seeking nomination for election (as opposed to hearings on a ballot petition filed in the particular election for which the candidate is seeking nomination for election). Local Law No. 12 of 2003 also provides that the Board may adopt rules limiting the amount of public funds available to participants on the ballot in one or more primaries where the number of persons eligible to vote for party nominees is small. **See** Administrative Code §3-705(6). It further provides that this public funds limitation is not applicable if a participant is opposed by a participant who is not subject to the limitation or by a non-participant who has spent more than a specified amount. The local law permits the Board to define a small primary, to determine the limit on public funds payments, and to establish the level of spending required by a non-participant to lift the limitation. The amendments define a small primary as one in which the number of persons eligible to vote for party nominees totals fewer than one thousand; limit public funds payments to persons in small primaries to $5,000; and provide that spending by a non-participant in that primary in excess of $10,000 will lift the public funds limitation. The Board will rely upon the determination of the Board of Elections for the calendar year of the primary election pursuant to §5-604 of the New York Election Law as to the number of persons eligible to vote in such primary election. If a determination for a primary election for any covered office is not available by the day before the certification deadline, however, the most recent available Board of Elections determination for such office shall be relied upon. These amendments are intended to protect the Public Fund when the number of voters to whom a candidate must appeal is very limited. For example, during the 2001 elections, a candidate running on the Green Party line in Council District 20 (Queens-Flushing), Paul Graziano, received more than $26,000 in public funds for running in a primary in which the total number of eligible voters was 111, and the total number of votes cast for the two candidates who ran was 36. For the general election, as the Green Party nominee, Mr. Graziano received an additional $936. The amendments also provide that the phrase "makes expenditures" contained in Administrative Code §3-705(6) means "spent or contracted or obligated to spend," the phrase used in determining aggregate spending in Administrative Code §3-705(7) and the bonus provision contained in Administrative Code §3-706(3). Administrative Code §3-705(6) is intended, in part, to limit public funds available to participants who are in small primaries, but it is not intended to impede their ability to wage a competitive campaign against a high-spending opponent. Therefore, a candidate's financial activity-including activity funded on credit-is more relevant to such a determination than an evaluation of the opponent's actual level of expenditures. Thus, the amendments use the standard provided for in Administrative Code §§3-706(3) and 3-705(7), rather than a standard that only measures expenditures. Finally, the amendments provide that Board determinations pursuant to Administrative Code §3-705(6) and (7) regarding the level of a candidate's spending shall be made in accordance with §7-03, which establishes the procedures for determining whether a non-participant's financial activity triggers the bonus provision contained in Administrative Code §3-706(3). 2. **Validity of Matchable Contribution Claims** (§5-01(d)(11)) The amendment conforms §5-01(d)(11) to Local Law No. 12 of 2003 so that matchable contribution claims on contributions of $500 or more will be invalid unless full employer and occupation information is provided. 4. **Flat Grants in Special Circumstances** (§5-01(j)) The amendment provides for flat grants to participants in a runoff special election in the same manner as the Board provides to participants in a runoff primary election. 5. **Deductions from Payments** (§5-01(n)) Local Law No. 12 of 2003 provides that contributions by participants to other political committees shall not be a basis for reducing public funds payments, provided, among other things, that the aggregate contributions made do not exceed certain limits. **See** Administrative Code §3-705(8). The amendment to §5-01(n), which provides that disbursements not provided for in §3-705(8) will continue to reduce public funds payments unless made out of a segregated bank account in accordance with §5-01(n)(2), reflects the "safe harbor" amounts in contributions now provided for by law.

7. Statement of Basis and Purpose in City Record Aug. 20, 2004: Public Funds 1. **Expenditures in Connection With Litigation** (Rules 5-01, 1-08(g)(2)) The amendments confirm that public funds may not be used to pay expenditures made in connection with any action, claim or suit before any court or arbitrator. Participating candidates should not be able to subsidize litigation with public funds, and litigation expenses are not qualified campaign

expenditures. The rule ensures that public funds, which are distributed for a specific public purpose and public benefit, are not spent for purposes other than those defined in the law, or for private use or private gain. 2. **Petition for Review of Eligibility, Payment and Repayment Determinations** (Rules 5-01(b), 5-02(a)) By adopting Rule 5-02(a), the Board in its discretion offers candidates an opportunity to seek Board review of a payment determination prior to seeking court relief. In the 2001 and 2003 elections, however, rather than treating the Rule 5-02(a) process as an opportunity to obtain reconsideration of a prior determination, a number of candidates sought to use the rule to submit documentation or information not submitted to the Board prior to the determination sought to be reviewed. In this manner, candidates have sought to employ the rule to obtain an additional opportunity to present new facts despite repeated requests and opportunities to submit the information, up to and including issuance of the final audit report. They have thus sought to avoid the consequences of failing to submit documentation of campaign records and related information in a timely manner and to obtain Board review of a late submission despite missed deadlines. The rule is intended to discourage poor record-keeping and creation or dating of records after the fact, and to re-enforce the importance of timely submission of documentation in response to deadlines set by the Board. Also, the rule should help maintain an even playing field among candidates. Unfairness results to candidates who abide by Program requirements when other candidates fail to meet record-keeping requirements and deadlines. The rule will also improve the efficiency of the payment and audit processes and streamline Board meetings, to the benefit of both candidates and the operation of the Board. The rule provides that candidates may not include in a Rule 5-02(a) petition documentation or facts not submitted prior to the determination which the candidates seek to have reviewed. There is a narrow exception for good cause so that the Board, in its discretion, may allow a candidate to provide new documentation or information where unusual circumstances merit the action.

Rules of the City of New York

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

52 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-02 Review of Eligibility, Payment, and Repayment Determinations.

(a) **Written petitions for review.**

(1) After the Board provides a participant a written determination specifying the basis for payment or non-payment of public funds prior to the election, the participant may petition the Board in writing for reconsideration of such determination. Such petition must state the grounds for reconsideration and may include a request to appear before the Board concerning the subject of such petition. Before the election, the Board shall review the determination that is the subject of the petition for review within five business days of the filing of such petition. In the event the Board is unable to convene within five business days, the Board may delegate to the Chair of the Board or his or her designee authority to make a determination regarding the petition. The Board shall timely issue a written determination on the subject of the petition. If the petition is denied, the Board's notice shall inform the participant of the right to appeal the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules.

(2) The participating candidate and his or her principal committee shall not include in any such petition any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failures to communicate on a timely basis with the Board.

(3) The participating candidate may submit a petition for review of a payment or non-payment determination after the issuance of the participant's final audit report within thirty days of issuance of the final audit report and only upon submission of information and/or documentation that was unavailable to the Board previously and is material to such determination, and a showing that the participant had good cause for the previous failure to provide such information

and/or documentation.

(b) **Final disqualification from the ballot.** The Board will consider a candidate to be finally disqualified from the ballot on the earlier of the date of an administrative or judicial determination disqualifying the candidate for which there is no appeal as of right (unless the disqualification is reversed on appeal or otherwise) or of the election. Payment may be made to a participant who was temporarily on the ballot or opposed in an election, pursuant to a determination of the Board of Elections or a court of competent jurisdiction, but then ultimately disqualified from the ballot or unopposed in that election, only when the Board's audit of the participant's campaign has been completed and only if the participant has, within 30 days after the date of the final disqualification, as provided herein, filed a written petition, sworn to or affirmed, and supporting documentation that demonstrates that:

(1) liabilities in qualified campaign expenditures incurred before the date of final disqualification remain unpaid;

(2) the total amount of cash on hand is insufficient to pay these liabilities;

(3) hardship will exist if public funds are not paid;

(4) any and all expenditures made and liabilities incurred after the final disqualification were reasonable and necessary; and

(5) the campaign was otherwise eligible and in compliance with all other Program requirements as of the date of final disqualification and has remained in compliance at all times since that date.

The petition shall also include an undertaking to use any public funds paid for extinguishing the liabilities enumerated pursuant to paragraph (1).

HISTORICAL NOTE

Section amended City Record Oct. 10, 1995 §49, eff. Nov. 9, 1995. [See Note 2]

Subd. (a) amended City Record June 18, 2009 §5, eff. July 18, 2009. [See T52 §1-08 Note 13]

Subd. (a) amended City Record Feb. 20, 2009 §9, eff. Mar. 22, 2009. [See T52 §1-04 Note 10]

Subd. (a) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See T52 §5-01 Note 7]

Subd. (a) heading amended City Record Oct. 26, 2007 §22, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

Subd. (a) par (1) amended City Record Oct. 26, 2007 §22, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

Subd. (b) amended City Record July 20, 1999 §57, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 15, 2003 eff. Feb. 14, 2003. [See Note 1]

Subd. (a) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) added (as subd. (j)) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) added (This subd. (e) was repealed in Oct. 10, 1995 amendment) City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (f) relettered and amended (former subd. (e)) City Record Sept. 2, 1992 eff. Oct. 2, 1992. (This subd. (f) was repealed in Oct. 10, 1995 amendment).

Subd. (g)-(i) relettered (former subds. (f)-(h)) City Record Sept. 2, 1992 eff. Oct. 2, 1992. (These subds. were repealed in Oct. 10, 1995 amendment).

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 2003:

Review of Eligibility, Payment, and Repayment Determination (Rule 5-02(a))

The amendments to Rule 5-02(a) provide that, to the extent practicable, the Board shall make determinations upon written petitions for review of payment determinations within 30 days of receipt of the written petition, or within 10 business days of receipt if the petition is received less than 30 days before a covered election. The amendments further provide that the Board's written notice of its determination shall include the reason(s) for the determination. The Board has received comments from some candidates that current Rule 5-02(a) does not require the Board to review a petition for payment determinations within a specified time period, and does not require the Board to explain the rationale for a determination on a petition. The Board's practice has been to review such petitions as soon as practicable, and to issue a written notice of the Board's determination, including an explanation of the determination. The amendments codify these practices. The amendments do not require the Board to make a determination within a prescribed time period, because some petitions may raise difficult issues for the Board, require voluminous document review, or require additional information from the petitioner.

2. Statement of Basis and Purpose in City Record Oct. 10, 1995: **Procedures for Appeal** (R. 5-02) The rules shorten and simplify the procedure for appealing the Board's payment and repayment determinations.

Rules of the City of New York

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

52 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-03 Repaying Public Funds.

(a) **Participants returning public funds.** Participants returning public funds shall make a check payable or endorse the public fund check to the "New York City Election Campaign Finance Fund." Participants may not reclaim public funds they have returned.

(b) **Participant is disqualified from the ballot.** (1) Pursuant to §3-709(7) of the Code, a participant who has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the New York City Board of Elections or a court of competent jurisdiction, may not thereafter spend public funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures. All public funds in excess of such liabilities previously incurred shall be promptly repaid to the Board; the amount to be repaid shall be determined in accordance with §3-710(2)(b) of the Code and subdivision (d). A repayment made pursuant to §3-709(7) shall not preclude a determination that an additional repayment is required pursuant to that or any other provision of the Act.

(2) Pursuant to §3-710(3) of the Code, a participant who has been disqualified by a court of competent jurisdiction on the grounds that he or she committed fraudulent acts in order to obtain a place on the ballot, and such decision is not reversed, shall pay to the Board an amount equal to the total public funds paid to the participant. Payments required pursuant to this paragraph shall be made promptly upon such final deter- mination.

(c) **Excess public fund payments.** Pursuant to §3-710(2)(a) of the Code, the Board shall notify a participant in writing if public funds paid to the participant were in excess of the aggregate amount for which the participant qualified, and such participant shall pay to the Board an amount equal to the amount of the excess payments.

(d) **Improper use of public funds.** Pursuant to §3-710(2)(b) of the Code, the Board shall notify a participant in writing if it finds that public funds paid to the participant were used for purposes other than qualified campaign expenditures and the participant shall repay to the Board any improperly used public funds; provided, however, that in considering whether or not a participating candidate shall be required to pay to the Board such amount or an amount less than the entire amount to be repaid, the Board shall act in accordance with the following: (i) where credible documentation supporting each qualified campaign expenditure exists but is incomplete, the Board shall not impose such liability for such expenditure; (ii) where there is an absence of credible documentation for each qualified campaign expenditure, the Board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to trained staff, internal procedures to follow published Board guidelines and procedures to follow standard financial controls.

(e) **Unspent campaign funds.** (1) Pursuant to §3-710(2)(c) of the Code, the Board shall notify a participant in writing if it finds that the participant owes unspent campaign funds to the Board. The participant shall promptly pay to the Board unspent campaign funds from an election; provided, however, that all unspent campaign funds for a participant shall be immediately due and payable to the Board upon a determination by the Board that the participant has delayed the post-election audit process. The participant shall promptly pay to the Board any additional unspent campaign funds based upon a determination made by the Board at a subsequent date. Unspent campaign funds determinations made by the Board shall be based on the participant's receipts and expenditures (including any outstanding bills). The Board may also consider information revealed in the course of an audit or investigation in making an unspent campaign funds determination, including, but not limited to, the fact that campaign expenditures were made in violation of law, that expenditures were made for any purpose other than the furtherance of the participant's nomination or election, or that the participant has not maintained or provided requested documentation.

(2) (i) A participant may not use receipts for any purpose other than disbursements in the preceding election until all unspent campaign funds have been repaid, except as otherwise provided in Rule 1-03(b). Notwithstanding the presumption of Rule 1-08(c)(1), a participant has the burden of demonstrating that a post-election expenditure is for the preceding election.

(ii) Before repaying unspent campaign funds, a participant may make post-election expenditures only for routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit. Such expenditures may include: payment of utility bills and rent; reasonable staff salaries and consultancy fees for responding to a post-election audit; reasonable staff salaries and legal fees incurred prior to the date of the issuance of the participant's final audit report and associated with defending against a claim that public funds must be repaid; a post-election event for staff, volunteers, and/or supporters held within thirty days of the election; reasonable moving expenses related to closing the campaign office; a holiday card mailing to contributors, campaign volunteers, and staff; thank you notes for contributors, campaign volunteers, and staff; payment of taxes and other reasonable expenses for compliance with applicable tax laws; and interest expense. Routine post-election expenditures that may be paid for with unspent campaign funds do not include such items as post-election mailings other than as specifically provided for in this subparagraph; making contributions; or making bonus payments or gifts to staff or volunteers. Unspent campaign funds may not be used for transition and inauguration activities.

(iii) Notwithstanding the restriction on the use of receipts provided in subdivision (2)(i), a participant who has outstanding liabilities from the election, including a participant who owes public funds or penalties to the Board, may make post-election expenditures for the purpose of raising funds to repay such debt, provided, however, that such expenditures and any contributions received shall be included in the participant's unspent funds calculation unless such expenditures and contributions are incurred or received after the date of the issuance of the participant's final audit report.

(f) **Other reasons for repayment.** The Board shall notify a participant of any amount of public funds to be repaid because:

(i) the participant has not maintained copies of checks or contribution cards that document matchable contributions; or

(ii) the public funds paid were based on contributions that have been returned or contribution checks that have not been paid; or

(iii) the participant has failed to demonstrate eligibility for the public funds paid or compliance with Program requirements, or both; or

(iv) a determination pursuant to §3-705(6), (7), or §3-706(3) of the Code is reversed following reconsideration pursuant to Rule 7-03(k).

(g) Repayment determinations. The participant shall promptly repay public funds upon any determination made by the Board that a repayment is required pursuant to the Act and this rule. Any claim for the repayment of public funds shall be based on a final determination issued by the Board following an adjudication pursuant to Rule 7-02(f), unless such adjudication is waived by the candidate or principal committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 20, 1999 §58 eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (b) par (1) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (c) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (d) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) amended City Record Oct. 23, 2008 §11, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (e) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (f) amended City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) designated and amended (former (f)(2)) City Record Oct. 26, 2007 §23, eff. Nov. 25, 2007.

[See T52 §1-02 Note 6]

DERIVATION

Subd. (a) amended City Record Oct. 10, 1995 §49, eff. Nov. 9, 1995.

Subd. (d) amended City Record Aug. 7, 2002 Part I, eff. Sept. 6, 2002. [See Note 4]

Subd. (d) par (1) amended, par (2) repealed City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See

Note 3]

Subd. (e) amended City Record July 20, 1999 §59 eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) par (1) amended City Record Aug. 7, 2002 Part F Subpart 9, eff. Sept. 6, 2002. [See

Note 2]

Subd. (e) par (1) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 3]

Subd. (e) par (1) amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (e) par (2) subpar (ii) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

Subd. (e) par (2) subpar (ii) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 3]

Subd. (f) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5] Note par (1) designation bracketed out of law in 2007 amendment.

Subd. (f) par (1) subpars (iii), (iv) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992. Note par (1) designation bracketed out of law in 2007 amendment.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

3. **Winding Up Expenditures** (§5-03(e)(2)(ii))

Section 5-03(e)(2)(ii) provides examples of permitted and prohibited winding up expenditures. During the 2001 elections, some participants had legitimate winding up expenses not identified in the section, and some participants expressed confusion over what constituted a legitimate winding up expense. Based on the Board's experiences with the 2001 elections, the amendment adds additional examples of legitimate winding up expenditures, including utility bills, rent, and payment of taxes and other reasonable expenses for compliance with applicable tax laws, and responding to the post-election audit. This amendment is intended to aid participants by providing them with additional guidance as to permitted and prohibited winding up expenditures.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: 9. **Deadline for Repayment of Unspent Campaign Funds** (§5-03(e)(1)) Section 3-710(2)(c) of the Code requires participating campaigns that have received public funds to pay to the Board any unspent campaign funds that they have following their election. The reimbursement must be made "not later than ten days after all liabilities have been paid and in any event, not later than either the closing date of the final disclosure report, or the day on which the campaign finance board issues its final audit report for such participating committee." Currently, §5-03(e)(1) requires participants to return these unspent campaign funds to the Board within 10 days after they have paid their liabilities for the previous election, but no later than the closing date of the final disclosure statement for the election, which currently falls in early January after the election. The amendment to the rule makes this deadline the date on which the Board issues the final audit report for the committee, to give candidates a more reasonable period of time to pay all liabilities and close out their campaigns' affairs, but provides that the unspent campaign funds would be due immediately if the candidate is found to have delayed the audit process.

3. Statement of Basis and Purpose in City Record Mar. 27, 2001: Improper Use of Public Funds Board Rule 5-03(d)(1) provides that a participant must promptly repay to the Board any public funds that the Board finds the participant used for purposes other than qualified campaign expenditures. Under Rule 5-03(d)(2), a participant may recover such repaid public funds if the participant can demonstrate that the participant's total qualified campaign expenditures made in an election equal or exceed the total public funds paid to the participant. However, Board Rule 5-03(a) prohibits participants from reclaiming any public funds that they have returned to the Board. The amendment to Rule 5-03(d) clarifies the interaction between Rule 5-03(d)(2) and 5-03(a). It provides participants the opportunity to demonstrate before they must repay public funds that the total qualified campaign expenditures made in the election

equal or exceed the public funds that have been paid to the participant. Participants unable to make such a showing are required to repay improperly used public funds and will not be able later to reclaim funds that have been repaid. Repayment of Public Funds 1. **Calculating Unspent Campaign Funds** (Rule 5-03(e)(1)) Following an election, the Board calculates unspent campaign funds by subtracting a particpant's campaign expenditures, including any outstanding bills, from a participant's receipts. The amendment makes clear that for purposes of making such a calculation, the Board may consider other information revealed in the course of an audit or investigation in making an unspent campaign funds determination. 2. **Post-election Expenditures for Winding-up Activities** (Rule 5-03(e)(2)(ii)) The past rule allowed campaigns to make post-election expenditures for meals that were of reasonable cost to thank campaign workers. It was difficult and time consuming for the Board to review such party expenditures to determine if they were, in fact, of reasonable cost. Therefore, the rule prohibits post-election expenditures of unspent campaign funds for any post-election event, including meals or parties. The rule also prohibits post-election expenditures for gifts or salary bonuses to thank campaign staff or volunteers for their efforts, which are not considered by the Campaign Finance Board to be routine activities associated with winding-up a campaign. As amended, this rule overrules Advisory Opinion Nos. 1997-14 (December 9, 1997) and 1997-13 (November 25, 1997).

4. Statement of Basis and Purpose in City Record Aug. 7, 2002: Technical Corrections The amendments correct certain typographical errors in Campaign Finance Board Rules 5-03(d) and 7-05.

CASE NOTES

¶ 1. Legal expenditures do not qualify as a "routine activity" for the purpose of post-election expenditures that can be deducted before repaying unspent campaign funds. Eisland v. New York City Campaign Finance Board, 31 A.D.3d 259, 818 N.Y.S.2d 501 (1st Dept. 2006).

Rules of the City of New York

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

52 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 5 PUBLIC FUNDS

§5-04 Fund Administration.

To safeguard the administration of the Fund and assure candidates that sufficient public funds will be available to make all payments required by the Act in upcoming elections, as guaranteed to participants by Charter §1052(a)(10), the Board shall:

(a) make budget requests for the Fund sufficient to cover all anticipated Fund obligations in the upcoming fiscal year and to maintain a reserve for contingencies;

(b) when it has determined that monies in the Fund are insufficient or likely to be insufficient for payments to participants, report this determination to the Commissioner of Finance and provide its estimate of the additional amount which will be necessary to make such payments pursuant to the Act (together with a detailed statement of the assumptions and methodologies on which the estimate is based), as required by Charter §1052(a)(10), not more than four days after which the Commissioner of Finance is required by Charter §1052(a)(10) to transfer an amount equal to the Board's estimate from the City's general fund to the Fund;

(c) take steps to ensure that the Fund is maintained in a separate account, credited with all sums appropriated therefor and all earnings accruing thereon, in the custody of the comptroller on behalf of the Board, as required by Charter §1052(a)(10);

(d) take steps to ensure that the Fund and its administration are insulated from the risk of improper action by any City official or agency or any agent or contractor thereof; (e) subject the Fund to periodic audits by independent outside auditors; and

(f) take such other actions as are necessary and proper to insure the integrity of the Fund.

HISTORICAL NOTE

Section added City Record July 20, 1999 §60, eff. Aug. 19, 1999. [See T52 §5-01 Note 1]

Rules of the City of New York

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

52 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 6 PUBLIC ACCESS TO INFORMATION

§6-01 Generally.

(a) **Records access officer.** The Board's Director of Administrative Services or the Executive Director's designee is its records access officer. The records access officer is responsible for ensuring appropriate agency response to public requests for access to records. The records access officer shall ensure that Board staff:

(1) upon receipt of a written request to inspect records:

(i) make the records available for inspection; or

(ii) deny access to the records in whole or in part and explain in writing the reason for the denial;

(2) upon written request for copies of records:

(i) make a copy available upon payment or offer to pay fees, if any, in accordance with this Rule; or

(ii) deny the request for copies of records in whole or in part and explain in writing the reasons for the denial;

(3) upon written request, certify that a record is a true copy; and

(4) upon failure to locate records pursuant to a written request, certify that:

(i) the Board is not the custodian for such records; or

(ii) the records of which the Board is a custodian cannot be found after diligent search.

(b) **Record location, availability, and use.** Records shall be available for public inspection and copying at the offices of the Board. Requests for public access to records shall be accepted and records produced during the hours of 10 a.m.-4 p.m., Monday through Friday. The records access officer, or his or her designee, shall have the discretion to limit the number of records a requester may receive at any one time. No marks of any kind shall be made by a requester on any record provided for inspection. Inspection or copying of records shall be permitted only in the area designated by the records access officer for such purpose.

(c) **Requests for access.** Board staff may require a written request for access to records, but oral requests may be accepted when records are readily available. A response shall be given regarding any written request reasonably describing records sought within 5 business days of receipt of the request. A request shall reasonably describe the records sought. Whenever possible, a requester shall supply information regarding dates, file designations, or other information that may describe the records sought and enable the efficient location of the records. If the records access officer does not grant or deny access to records sought within 5 business days of receipt of a written request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date on which the request will be granted or denied. If circumstances prevent disclosure to the requester within 20 business days from the date of the acknowledgment of the receipt of the request, the Board shall state in writing the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted.

(d) **Denial of access.** Denial of access to records shall be made in writing stating the reason for the denial and advising the requester of the right to appeal. The Board's Executive Director or the Executive Director's designee shall hear appeals from denial of access to records. The time for deciding an appeal shall commence upon receipt of a dated written appeal, including:

(1) the date of the denial of access; and

(2) the name and return address of the requester.

The Executive Director or the Executive Director's designee shall transmit to the Committee on Open Government copies of all appeals upon receipt. The Executive Director or the Executive Director's designee shall inform the requester and the Committee on Open Government of a decision on the appeal, in writing, within 10 business days of receipt of an appeal.

(e) **Fees.** The Board may charge 25 cents per page for photocopies not exceeding 9 inches by 14 inches or the actual cost of reproducing any other record. In determining the actual cost, the Board may include: (i) an amount equal to the hourly salary attributed to the lowest paid Board employee who has the necessary skill required to prepare a copy of the requested record, except that no fee shall be charged for staff time if less than two hours is needed to prepare a copy of the requested record; (ii) the actual cost of storage devices or media provided to the requester in complying with the request; and (iii) the actual cost to the Board of engaging an outside professional service to prepare a copy of a record, where the Board's information technology equipment is inadequate to prepare a copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (c) amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (d) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (d) open par amended City Record Oct. 18, 1996 eff. Jan. 1, 1997.

Subd. (e) amended City Record July 31, 2009 §1, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (e) amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 2001:

Public Access to Information

Records Access Officer (Rule 6-01(a))

This amendment replaces the Deputy Executive Director with the Director of Administrative Services or the Executive Director's designee as the Board's records access officer.

Denial of Access (Rule 6-01(d))

Under the rule, either the Executive Director or the Executive Director's designee hear appeals from a denial by the Board of a request for access to records.

Rules of the City of New York

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

52 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-01 Complaints and Investigations.

(a) **Initiation of proceeding.** (i) A proceeding under subdivision four of §1136.1 of the Charter or under the Act may be commenced when:

(1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter, Act or these Rules, or

(2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter, Act or these Rules.

(ii) The following violations shall constitute infractions:

(1) a limited and non-repetitive failure, not to exceed a total of three such failures, to comply with the contribution limitations or prohibitions contained in §§3-703(1)(f), (h), (k), and (l) of the Code, provided such contribution is promptly returned to the contributor upon notice from the Board of the acceptance of the contribution; and

(2) a failure to file a complete and timely disclosure statement in a form and manner acceptable to the Board, provided such disclosure statement is promptly refiled in a form and manner acceptable to the Board, and provided, further, that this shall apply to only one disclosure statement per election cycle.

(b) **Service of complaints.** A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board, 40 Rector Street, 7th Floor, New York, New York 10006.

(c) **Contents of complaint.** A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter, Act or these Rules to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.

(d) **Initial complaint processing.** (1) Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of subdivision (c), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint.

(2) If a complaint does not comply with the requirements of subdivision (c), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.

(e) **Opportunity to respond to complaint.** Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit a verified answer, which may set forth reasons why the Board should dismiss the complaint. If, based upon its review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.

(f) **Investigation.** Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter, Act or these Rules. In its investigation, the Board may use its investigative powers pursuant to §§3-708(5) and 3-710(1) of the Code. An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §32, eff. Jan. 1, 1997.

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record July 20, 1999 §61, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (a) amended City Record May 5, 2003 eff. June 4, 2003 and will be effective commencing with

the regularly scheduled 2003 elections. [See Note 2]

Subd. (c) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (e) amended City Record Oct. 18, 1996 §33, eff. Jan. 1, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 18, 1996:

Complaints and Investigations (R. 7-01(e))

Under the rules, the Board may set a shorter time for a respondent to file an answer to a complaint.

2. Statement of Basis and Purpose in City Record May 5, 2003: Campaign Finance Board 1. **Infractions** (§7-01(a)) Local Law No. 12 of 2003 directs the Board to promulgate rules defining "infractions," and further provides that such definition "shall include, but not be limited to, failures to comply with the provisions [of the Act or the rules] that are limited and non-repetitive." Prior to enactment of the local law, the Board had adopted penalty assessment guidelines for the 2003 elections, which it published on its Web site. These guidelines provide that certain limited infringements of the contribution limits or prohibitions, or a limited failure to timely file a disclosure statement, will be considered infractions. As provided in the guidelines, infractions include a participant's acceptance of up to a **total** of three impermissible contributions. The amendments to §7-01(a) define an infraction based on these guidelines, and provide that the following violations of the Act constitute infractions: (1) a limited and non-repetitive failure to comply with the program's contribution limitations or prohibitions, provided that the contribution promptly is returned to the contributor upon notice from the Board of the acceptance of the contribution; and (2) the limited and non-repetitive failure to file one complete and timely disclosure statement in a form and manner acceptable to the Board, provided such disclosure statement is promptly refiled in a form and manner acceptable to the Board.

Rules of the City of New York

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

52 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-02 Board Determinations.

(a) **Determination that complaint lacks merit.** Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter, Act and these Rules have not been substantiated and dismiss the complaint or terminate the investigation.

(b) **Participant not eligible for public funds.** Following an investigation, the Board may make a determination that a participant is ineligible to receive public funds. In the event of a determination of ineligibility, the Board will send written notification to the participant and the participant may request reconsideration of such determination pursuant to Rule 5-02(a).

(c) **Notice and opportunity to contest.**

(1) If the Board has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, and/or that a participant must repay public funds to the Board, the Board shall notify the candidate and treasurer in writing of the alleged violation and proposed civil penalty and/or of the amount of the alleged public funds repayment obligation. Such notice shall:

(i) set forth in detail the legal basis for the Board's reason to believe there is a violation of a law or rule over which the Board has jurisdiction and/or a repayment obligation;

(ii) notify the candidate and treasurer of the opportunity to submit information and documentation for the Board's consideration within a reasonable time period to be specified in such notice; and

(iii) notify the candidate and treasurer of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty and/or the alleged public funds repayment obligation.

(2) Unless specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board's sole discretion, be disregarded.

(3) The notice shall inform the candidate and treasurer that hearings are conducted in accordance with the requirements for adjudications contained in section 1046 of the Charter unless such procedures are waived by the candidate or principal committee.

(4) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred and/or the amount of public funds repayment obligation, and shall provide notice setting forth in detail the legal basis of the Board's determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action or, in the case of civil penalties, by deduction from any public funds otherwise due for any election.

(d) **Conciliation.** (1) Upon review of a respondent's submission, or if the Board otherwise has reason to believe that a violation of a law or rule over which the Board has jurisdiction has occurred, the Board may initiate conciliation procedures. For this purpose the Board may conduct a conciliation conference. Notice of the conference shall be served on those parties whose attendance the Board considers necessary.

(2) If terms of conciliation which are satisfactory to the parties are reached, a conciliation agreement shall be signed by the parties subject to its terms and by the Board's Executive Director, on the Board's behalf. This agreement may require payment of appropriate civil penalties for violations as determined by the Board. If the amounts to be paid as provided for in the agreement are not paid, they may be sought through appropriate enforcement action or by deduction from any public funds otherwise due for any election. Upon execution of such an agreement, the Board shall administratively close the case. Conciliation agreements shall be binding on all parties. In the event the Board has reason to believe that terms and conditions of the agreement have not been complied with, or if new facts are brought to the Board's attention, the Board may, in its discretion, re-open the case and/or bring an appropriate enforcement proceeding.

(3) Conciliation procedures are not part of the Board's standard practices, but may be appropriate to address novel issues and are conducted solely at the discretion of the Board.

(f) **Adjudications in accordance with §1046 of the Charter.**

(1) Adjudications pursuant to this rule shall be conducted by one or more hearing officers. The Board, at its sole discretion, may designate one or more members of the Board and/or an administrative law judge to act as hearing officers. One or more members of the Board's staff may provide legal and procedural advice to the hearing officer and to the Board, subject to the direction of the hearing officer(s).

(2) The Board shall commence an adjudication pursuant to this rule by serving a notice containing a statement of the nature of the proceeding, the legal authority and jurisdiction under which the hearing is to be held, and a short and plain statement of the matters to be adjudicated, including reference to the particular sections of the Charter, Act, and these Rules involved.

(3) The Board shall provide written notice of the time and place of the hearing to the candidate and treasurer.

(4) The candidate and treasurer must provide to the hearing officer(s) and Board staff a substantive written

response to the notice stating the defense to the notice at least two weeks prior to the date of the hearing. The written response to the notice may include affidavits or affirmations, documentary exhibits, or other evidentiary material in rebuttal of the notice, and may also be accompanied by a memorandum of law.

(5) The names and contact information of all persons wishing to present testimony on the law or the facts at the hearing, including any witnesses to be examined, must be provided to the hearing officer(s) and Board staff at least five business days prior to the date of the hearing.

(6) The hearing officer(s) shall administer oaths, subpoena and examine witnesses, receive written and oral testimony, rule on the admissibility of evidence, and decide all other aspects of the conduct of the hearing. Findings of fact shall be based exclusively on the record of the proceeding as a whole. The hearing officer(s) shall make findings of fact and conclusions of law and shall forward a recommended final determination to the Board along with the record of the adjudication upon which the recommended determination is based. The Board may adopt, reject or modify any recommended determination.

(7) The candidate and treasurer shall be afforded due process of law, including the opportunity to be represented by counsel, to request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts. All witnesses shall testify under oath. Adherence to formal rules of evidence is not required.

(8) Testimony and argument on the law and facts shall be presented in the following order: Board staff, witnesses called by Board staff, if any, cross-examination, the candidate and/or treasurer and/or their counsel, witnesses called by the candidate and/or treasurer and/or their counsel, and cross-examination. Each party shall be afforded an opportunity to present rebuttal testimony, if deemed appropriate by the hearing officer.

(9) No ex parte communications relating to other than ministerial matters regarding a hearing shall be received by a hearing officer, including internal agency directives not published as rules.

(10) Testimony shall be transcribed and/or recorded, and a copy of the transcript and/or recording, or any part thereof, shall be made available to any party to the hearing upon request for a reasonable price.

(11) Affidavits or affirmations submitted as evidence must be signed and under penalties of perjury. Failure of the respondent to produce at a hearing any document either requested by the Board or required to be maintained by the Board pursuant to the Act and these Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent.

(12) Once the hearing officer has issued the recommended final determination, each party shall have twenty days to submit written comments to the Board. The comments should raise any objections to the recommended determination, and objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be limited to the record of the adjudicatory proceeding. Comments shall be served upon all other parties, and shall be served upon the Board by the Office of the General Counsel. Upon application filed with the Office of the General Counsel, the Chair may shorten or extend the time for comments for good cause shown. No personal appearances shall be made before the Board unless the Board specifically requests that the parties appear.

(13) The Board shall provide a written determination within 30 days of the conclusion of the hearing if conducted by the full Board, or within 30 days of the conclusion of the written comments period if the hearing is conducted before (a) hearing officer(s), stating the basis for any assessed penalty or repayment obligation, including any findings of fact and conclusions of law, and shall notify the candidate of the commencement of the four-month period during which a special proceeding may be brought to challenge the Board's determination pursuant to Article 78 of the Civil Practice Law and Rules. Determinations made by the Board pursuant to this rule may not be appealed to the Board unless the Board specifically provides otherwise in its determination.

(g) **Penalties for Disclosure Statement and Contribution Violations.** The Board shall publicize staff guidelines for presumptive penalties to be recommended for the late submission of a disclosure statement, the failure to file a disclosure statement, and the acceptance of an over-the-limit or a prohibited contribution, subject to consideration of aggravating and mitigating factors that will be considered in determining the appropriate penalty assessment for the violation.

HISTORICAL NOTE

Section amended City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Section heading amended City Record July 20, 1999 §62, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record July 31, 2009 §3, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (c) amended City Record May 15, 2008 §17, eff. June 14, 2008. [See T52 §1-02 Note 7]

Subd. (c) amended City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (f) amended City Record July 31, 2009 §3, eff. Aug. 30, 2009. [See T52 §1-09 Note 3]

Subd. (f) repealed and added City Record Oct. 26, 2007 §24, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (g) added City Record Aug. 7, 2002 Part G, eff. Sept. 6, 2002. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) amended City Record May 22, 2007 §1, eff. June 21, 2007. [See Note 3]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Aug. 20, 2004 eff. Sept. 19, 2004. [See Note 2]

Subd. (c) amended City Record July 20, 1999 §63, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (d) amended City Record May 22, 2007 §1, eff. June 21, 2007. [See Note 3]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended (including designating subd. (e) as par (2)) City Record July 20, 1999 §64, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record July 20, 1999 §65, eff. Aug. 19, 1999. [See T52 §7-03 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 7, 2002:

Civil Penalties (Part G)

1. **Publication of Staff Guidelines for Proposed Penalties for Late or No Filing of Disclosure Statements, and for Contribution Violations** (§7-02(g))

To alert campaigns to the range of likely penalties for late submission of financial disclosure statements, failure to submit disclosure statements, and acceptance of over-the-limit or prohibited contributions, new subsection (g) of §7-02 requires the Board to publicize staff guidelines for presumptive penalties to be recommended to the Board for these violations, subject to aggravating and mitigating factors that will be considered in determining the penalty assessments.

2. Statement of Basis and Purpose in City Record Aug. 20, 2004: Opportunity to be Heard by the Board (Rule 7-02(c)) Administrative Code §3-710.5, added by Local Law No. 12 of 2003, provides that "[t]he board shall give written notice and the opportunity to appear before the board to any participating candidate, his or her principal committee, principal committee treasurer or any other agent of a participating candidate, if the board has reason to believe that such has committed a violation or infraction, before assessing any penalty for such action." This provision confirmed the Board practice of offering candidates the opportunity to contest proposed findings of violation and penalties. Candidates are informed of these proposals in a Notie of Recommended Penalties issued to candidates in advance of the meeting, informing them of the violations and penalties, as well as detailing the conditions for appearance. The amendment clarifies the rule's current requirement that the Board offer notice to candidates "by mail," confirming that although candidates must receive written notice, the Board may transmit such written notice by facsimile, electronic mail, or via the postal system.

3. Statement of Basis and Purpose in City Record May 22, 2007: Penalty Procedures (Rule 7-02) The amendments clarify and codify the Board's existing procedures for providing notice and opportunity to appear before the Board concerning complaints and other allegations of violations. In addition, the amendments clarify when the Board would find conciliation procedures to be appropriate.

Rules of the City of New York

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

52 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-03 Review of Non-Participant's Contributions and Expenditures.

(a) **Determination of eligibility.** (1) Pursuant to §3-705(6) of the Code, the Board shall determine whether a limited participant or a non-participant has spent or contracted or become obligated to spend an amount which, in the aggregate, exceeds ten thousand dollars; (2) pursuant to §3-705(7)(a) of the Code, the Board shall determine whether a candidate has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office as provided by §3-706(1) of the Code; (3) pursuant to §3-706(3)(a) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-half the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; (4) pursuant to §3-706(3)(b) of the Code, the Board shall determine whether a non-participant has spent or contracted or become obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the expenditure limit applicable to the participant(s) and/or limited participant(s) opposing that candidate; and (5) the Board shall verify the truthfulness of any certified signed statement submitted pursuant to §3-705(7)(b) of the Code and the Board shall determine whether supporting documentation submitted pursuant to §3-705(7)(b) of the Code demonstrates the existence of the condition or conditions described in such statement. For the purposes of making a determination pursuant to §3-705(7)(b)(1) of the Code, a non-participating or a limited participating candidate shall be presumed to have the ability to self finance when it is demonstrated through supporting documentation that such candidate has readily available funds in excess of one-fifth of the applicable expenditure limit and that such candidate can reasonably be expected to spend such funds for his or her nomination or election.

(b) **Generally.** To permit the Board to make these determinations in a timely, fair, and efficient manner, pursuant to the Act, it is expected that participants, limited participants, and non-participants will cooperate fully with Board requests for information and adhere to the procedures set forth in this rule and the requirements of New York Election Law Article 14 and State Board of Elections regulations.

(c) **Facial determinations.** The Board may find that a candidate's forms submitted to the Campaign Finance Board or to the Board of Elections provide on their face a sufficient basis for a determination pursuant to paragraph (a) above. The Board will presume that contributions and loans are accepted, disbursements are made, and liabilities are incurred by a candidate for his or her next following election. In the absence of evidence indicating otherwise, the Board will rely upon the date of contributions, loans, disbursements, and liabilities as they appear on forms submitted to the Campaign Finance Board or the Board of Elections. In addition, the Board will presume that cash on hand after an election consists of contributions that are available for expenditure in the next election.

(d) **Petitions.** The Board may make a determination pursuant to paragraph (a) above following the submission of a written pebtition, as provided in this rule. The written petition shall:

(1) be sworn to or affirmed;

(2) indicate the participant or limited participant on whose behalf it is submitted, if any;

(3) specify the particular information contained in forms submitted to the Campaign Finance Board or the Board of Elections on behalf of the respondent that is alleged to be inaccurate, if any, and the particular information alleged to be omitted from those forms, if any (in the absence of these allegations, the Board will presume that any forms on file at the Campaign Finance Board or the Board of Elections at the time the petition is submitted are true and complete for the applicable reporting periods);

(4) identify specific fund-raising and/or spending activities on behalf of the respondent that are alleged to have taken place after the close of the reporting period covered by the last such forms submitted on behalf of the respondent, if any;

(5) include all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on behalf of the respondent, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on his or her behalf; and

(6) contain information about statements reported to have been made by the respondent, his or her agents, or authorized representatives, and any other relevant infor- mation.

The Board will not consider petitions submitted after the due date for the last disclosure statement required to be filed with the Campaign Finance Board by any candidate in the election for which the petition is filed.

(e) **Petitioner's burden.** The petitioner shall submit with the petition evidence that supports the allegations made in the petition, including but not limited to the information described in paragraph (d)(5). The petitioner has the burden of demonstrating a sufficient basis for a determination pursuant to paragraph (a). Failure by the respondent to file required disclosure forms may be a sufficient basis, and must be addressed in the respondent's response to the petition.

(f) **Notice of petition.** The Board shall send a copy of the petition to the respondent, any opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, any opposing limited participants. The notice shall specify:

(1) the deadline for the respondent to submit a response, pursuant to subdivision (g); (2) the deadline for opposing participants or limited participants other than a respondent to submit petitions for consideration at any hearing referred

to in the notice; and

(3) the date and time at which the Board will conduct a hearing on the petition, if any, pursuant to subdivision (h).

(g) **Response to the petition**. The respondent shall submit a response in such manner as may be provided by the Board. The response shall:

(1) be sworn to or affirmed;

(2) either:

(i) acknowledge that fund-raising or spending on behalf of the respondent is sufficient to permit the Board to make a determination pursuant to paragraph (a), regardless of the merit of the petitioning participant's or limited participant's particular allegations; or

(ii) contend that a determination pursuant to paragraph (a) would be inappropriate and specify the allegations in the petition that are denied and those that are admitted;

(3) explain any failure to file any forms required in the election year; and

(4) be signed by the respondent or his or her treasurer. The respondent shall submit with the response evidence that supports the response, including, but not limited to, all relevant names, dates, and amounts pertaining to monetary and in-kind contributions, and vendors providing goods and services to the respondent or to a third party on his or her behalf, including information concerning the fair market value of services, materials, facilities, advertising, or other things of value reported to have been received or expended on behalf of the respondent. A failure to submit a response may be deemed an admission that there is a sufficient basis for a determination pursuant to paragraph (a).

(h) **Hearing.**

(1) The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request the Board to conduct a hearing on the petition.

(2) If the Board determines to conduct a hearing, as requested or on its own initiative, the hearing date will be no earlier than 10 days after the petition is received, except:

(i) for good cause shown; or

(ii) for petitions received less than 30 days before the election, in which case the hearing date will be no earlier than 3 days after the petition is received.

(3) The respondent and each opposing participant or limited participant shall notify the Board no less than one day in advance whether they will be represented at the hearing and, if the petitioner or the respondent will not be represented, the reason for the absence. Representation of a party at a hearing must be by a person with knowledge of the facts at issue.

(4) At the hearing, testimony given may be under oath, recorded, and in the following order:

(i) the petitioner;

(ii) opposing participants and/or limited participants other than a respondent;

(iii) the respondent;

(iv) Board staff, if appropriate; and

(v) an opportunity for each party to rebut, if deemed appropriate by the Board.

(i) **Notice of determination.** Following the review of disclosure forms, the submission of a petition and an opportunity for a response, and/or a hearing, the Board will decide whether there is a sufficient basis for a determination pursuant to paragraph (a). The Board shall provide written notice to the respondent, all opposing participants and limited participants other than a respondent, and the petitioner, if any, of a determination pursuant to paragraph (a) or a decision not to make such a determination, as requested by a petition, and the basis therefor.

(j) **New petitions.** A decision not to make a determination pursuant to paragraph (a) shall not be construed to preclude the subsequent submission of any petition for a determination respecting that candidate.

(k) **Reconsideration.** The petitioner, the respondent, or an opposing participant or limited participant other than a respondent may request that the Board reconsider the determination pursuant to paragraph (a) or the decision not to make such a determination. This request shall be made in writing no later than 10 days after the determination or decision. A request for reconsideration from a respondent must also include: (1) an affidavit of the respondent or his or her treasurer affirming that neither fundraising nor spending on behalf of the respondent that has taken place after the close of the most recent reporting period is sufficient to permit the Board to make a determination pursuant to paragraph (a); and (2) an undertaking by the respondent or treasurer to notify the Board immediately in writing if and when either fund-raising or spending on behalf of the respondent becomes sufficient to permit the Board to make a determination pursuant to paragraph (a). The Board may consider a respondent's failure to respond to the petition, or the failure of the party requesting reconsideration to be represented at a hearing on the petition, to be a sufficient basis for denying a request for reconsideration. The Board shall notify the respondent, all opposing participants, and, in the case of a determination pursuant to §3-706(a) or (b) of the Code, all opposing limited participants, and the petitioner on whether it will reconsider the determination pursuant to paragraph (a) or decide not to make such a determination, as the case may be. If the Board grants reconsideration and determines to conduct a hearing, the hearing shall be conducted in the manner described in paragraph (h)(4).

(l) **Submission of false information.** If the Board has reason to believe that a candidate or any other person has knowingly submitted false information or fabricated evidence or has knowingly withheld or concealed information, relevant to a determination under paragraph (a), the Board shall refer the matter to the appropriate agency for criminal prosecution and may commence a civil action to recover public funds and/or civil penalties, if appropriate.

HISTORICAL NOTE

Section amended City Record May 5, 2003 eff. June 4, 2003. [See Note 2]

Section heading amended City Record Oct. 23, 2008 §12, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (a) amended City Record Oct. 23, 2008 §12, eff. Nov. 22, 2008. [See T52 §1-02 Note 8]

Subd. (a) amended City Record Oct. 26, 2007 §25, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (d) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (g) par (2) subpar (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (h) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

Subd. (i) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

Subd. (k) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §2-01 Note 1]

DERIVATION

Section amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) amended City Record July 20, 1999 §66, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Technical Changes

Additional benefits for participants opposed by well-financed non-participants are reflected. Rule 7-03(a), following Administrative Code §3-706(3). Various technical changes and clarifications are made in Board procedures for complaints and findings of violation. Rules 7-01 and 7-02.

2. Statement of Basis and Purpose in City Record May 5, 2003: **Review of Contributions and Expenditures.** (§7-03) Prior to Local Law No. 12 of 2003, the Act provided that the Board would determine whether a non-participant had spent or contracted to spend more than 50% of the expenditure limit applicable to the participant opposing that candidate, in which case the participant would be eligible to receive additional "bonus" public funds pursuant to Administrative Code §3-706(3). Local Law No. 12 of 2003 provides for two additional instances in which the Board must determine the level of a candidate's financial activity. New Administrative Code §3-705(6), which establishes a limit on public funds payments to participants in small primaries, provides that such limit shall not apply if, among other things, a non-participant "makes expenditures in excess of a specified amount . . . as determined by the Board." An amendment to §5-01(a) (**see** above) provides that spending by a non-participant in excess of $10,000 will lift this public funds cap. New Administrative Code §3-705(7), which establishes limits on public funds payments to participants generally, provides that such limits shall not apply if, among other things, the participant is opposed by a "candidate [who has] spent or contracted or [has] obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office." The amendments to §7-03 apply the procedures applicable to a Board determination pursuant to Administrative Code §3-706(3) to the new determinations provided for in Administrative Code §3-705(6) and (7). In addition, to account for determinations in elections which do not occur in the fall of the calendar year, the amendment changes the deadline for submitting a petition. Currently the rule provides that a petition must be filed by January 15 following the election for which the petition is filed. The amendment provides that a petition must be filed by the due date for the last disclosure statement required to be filed during an election cycle by a participant who is a candidate in the election for which the petition is filed.

Rules of the City of New York

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

52 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-04 Advisory Opinions.

Upon the written request of a candidate or any other person, the Board shall issue advisory opinions interpreting the Act and these rules, or otherwise respond in writing to the request, within thirty days of receipt of such request, or within ten business days of receipt if such request is received less than thirty days before a covered election, to the extent practicable. The Board shall make public its advisory opinions and the questions of interpretation for which advisory opinions will be considered by the Board, including by publication on its Web site.

HISTORICAL NOTE

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Section amended City Record Nov. 19, 2002 eff. Dec. 19, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

Advisory Opinions (§7-04)

This amendment provides that the Board shall issue advisory opinions or otherwise respond in writing within thirty days of a written request, or within ten business days of receipt of a written request received less than thirty days before a covered election, to the extent practicable. Although the Board virtually always responds to advisory opinion requests within the time period proposed, there are instances when new and complex issues may require a considerable amount of time to resolve. This amendment is designed to give candidates a sense of what their expectations might be for the timing of a response to an advisory opinion request, while recognizing that new and complex issues may take the Board more time to resolve.

Rules of the City of New York

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

52 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-05 Contribution and Expenditure Limit Adjustments.

(a) Adjustment of Contribution Limits. Pursuant to §3-703(7) of the Code, not later than the first day of March in the year 2018, and every fourth year thereafter, the Board shall adjust the contribution limits in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

(b) Adjustment of Expenditure Limits. Pursuant to §3-706(1)(e) of the Code, not later than the first day of March in the year 2010, and every fourth year thereafter, the Board shall adjust the expenditure limits applicable pursuant to §3-706(1) and (2) in accordance with changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustments shall be based on the difference between the average consumer price index over the twelve months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

HISTORICAL NOTE

Section amended (without laying out heading) City Record Oct. 26, 2007 §26, eff. Nov. 25, 2007. [See

T52 §1-02 Note 6]

DERIVATION

Section amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Section amended City Record Aug. 7, 2002 Part I, eff. Sept. 6, 2002. [See T52 §5-03 Note 4]

Section repealed and added City Record Oct. 10, 1995 §50, eff. Nov. 9, 1995. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 10, 1995:

Other (R. 7-05 and other provisions)

The rules also:

· repeal a provision regarding reports the Board generates for candidate review;

· codify a 1994 Corporation Counsel opinion on the base year for determining changes in the Consumer Price Index (CPI) for the purpose of adjusting contribution and spending limits, as provided in the Act; and

· make other technical clarifications, including eliminating redundancies, repealing transitional language from previous elections, and substituting the term "public advocate" for "City Council president".

Rules of the City of New York

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

52 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 7 CAMPAIGN FINANCE BOARD

§7-06 Ethical Guidelines.

The Board has determined that the conduct of its members and staff should be guided by Ethical Guidelines. The Board recognizes that some of its members and staff may be subject to additional professional codes, such as the Lawyer's Code of Professional Responsibility. In addition, the standards set forth in the Act and Charter Chapters 46 and 68 are applicable to all Board members and staff. The purpose of these Guidelines is to state standards of behavior that go beyond legal and professional obligations in order to ensure the highest degree of public confidence in the work of the Board.

HISTORICAL NOTE

Section added City Record July 20, 1999 §67, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Ethical Guidelines

The rules take note of the Board's longstanding Ethical Guidelines, which are signed by and apply to Board members and Board staff. Rule 7-06.

Rules of the City of New York

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

52 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 8 PUBLIC PETITIONS FOR RULEMAKING

§8-01 Procedures for Submitting Petitions.

(a) Any person or entity may petition the Board to consider the adoption of a rule. The request must be sent to the Executive Director and contain the following information:

(1) the Rule to be considered, with proposed language for adoption;

(2) a statement of the Board's authority to promulgate the Rule and its purpose;

(3) argument(s) in support of adoption of the Rule;

(4) the period of time the Rule should be in effect;

(5) the name, address, telephone number, and signature of the petitioner or his or her authorized representative.

(b) Any change in the information provided pursuant to subdivision (a) paragraph (5) must be communicated promptly in writing to the Executive Director.

(c) All requests should be typewritten, if possible, but handwritten petitions will be accepted, provided they are legible.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 8 PUBLIC PETITIONS FOR RULEMAKING

§8-02 Responses to Petitions.

Within 60 days from the date the petition was received, the Board shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Board's discretion. The Board's decision to grant or deny a petition is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-01 Submission in Electronic Medium.

(a) **Electronic Submission Generally.** Except as specifically permitted pursuant to Rule 9-02, disclosure statements shall be generated by using Candidate Software for Managing and Reporting Transactions (C-SMART) and submitted in such form and manner as shall be provided by the Board. Documentation, whether electronically scanned or in hard copy form, shall be submitted in a form and manner as prescribed by the Board.

(b) **C-SMART.** (1) C-SMART shall be developed and issued by the Board, and may be issued in one or more stages; successive enhancements may modify and/or expand its uses. C-SMART may not be used, copied, or transferred except as authorized by the Board. Any version of C-SMART issued by the Board after January 1, 2008 shall enable candidates to meet their disclosure obligations under Article 14 of the Election Law, as amended by chapter 405 of the laws of 2005.

(2) The term "C-SMART" does not include campaign finance data stored on C-SMART by its users.

(3) C-SMART is a copyright of the New York City Campaign Finance Board.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See Note 2]

Subd. (a) amended City Record Oct. 26, 2007 §27, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (b) par (1) amended City Record Oct. 26, 2007 §27, eff. Nov. 25, 2007. [See T52 §1-02

Note 6]

DERIVATION

Section amended City Record Oct. 18, 1996 §34, eff. Oct. 18, 1996. [See Note 3]

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (a) [This part of rule was bracketed out of rule by Aug. 7, 2002 amendment] amended City

Record July 20, 1999 §68, eff. Aug. 19, 1999. [See Note 1]

Subd. (b) amended City Record Oct. 10, 1995 §51, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) added City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (c) par (4) [This part of rule was bracketed out of rule by Aug. 7, 2002 amendment] amended

City Record July 20, 1999 §68, eff. Aug. 19, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Electronic Filings

An amendment clarifies that all disclosure statements containing computer-generated data shall be made by electronic submission. Section 3-06(c). Electronic submissions must be accompanied by paper only if also required by the Board. Section 9-01(a), (c)(4).

Special election campaigns will have to submit written requests for approval to make an electronic submission, in a format other than C-SMART;cw, as soon as possible but not later than seven days before the disclosure statement is due. Section 9-02(b).

The deposit required for obtaining C-SMART;cw, the one copy per campaign limit, and use restrictions, are repealed. Section 9-02(c); 9-04.

2. Statement of Basis and Purpose in City Record Aug. 7, 2002: Electronic Document Submission **Submission of Documents to the Board in an Electronic Manner** (Rules 1-04(d), 2-01, 3-02, 3-06, 3-08, 9-01, 9-02, 9-03, 10-01, 10-02(b)(4), 10-02(d), 11-02, 11-03(b), 11-03(c)(5)) The amendments provide for and govern the submission of documents to the Board in an electronic manner.

3. Statement of Basis and Purpose in City Record Oct. 18, 1996: Computer Filings **Disclosure Statement Submission Requirements** (R. 9-01; 9-02(b), (c)(2); 9-03) The rules modify the requirements for electronic submissions. The requirement that disks and paper forms correspond is eliminated. Rather, disk submissions should include a paper form backup that will be available in the public disclosure file until it is superseded when the disks are successfully uploaded. The rules also specify requirements for electronic submissions covering only a portion of a disclosure statement and require immediate resubmission of disks that are rejected for reasons such as a virus or damage. The rules further state that the Board may provide in the future, by advisory opinion, for electronic submissions by means other than disk, if fea- sible. This amendment accounts for future technological developments, although no specific change in filing medium is being developed at this time.

Rules of the City of New York

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

52 RCNY 9-02 [Submitting

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-02 [Submitting Disclosure Statements; Format; Authorization]*2

(a) **Exceptions.** (1) Any candidate who seeks to submit disclosure statements, or a portion thereof, in any format or manner other than permitted by Rule 9-01 above, including but not limited to non-electronic formats and electronic formats not generated by C-SMART, shall submit a written request for authorization to the Board no later than four weeks before the filing date for the first disclosure statement for which the candidate desires an exception from Rule 9-01, or in the case of a special election, as soon as possible but no later than seven days before such disclosure statement filing date. Such written request shall be in a form and manner as prescribed by the Board. Small campaigns, as defined in Rule 3-02(f)(4), and other candidates who demonstrate that submission of disclosure statements in an electronic format would pose a substantial hardship, shall be permitted, upon request, to submit disclosure statements to the Board in non-electronic formats. Board authorization shall be in writing and shall apply only to the candidate, paper forms, and/or electronic submission form and manner specified therein. The authorization shall indicate whether it applies to one or more disclosure statements.

(2) State and Federal forms may not be submitted to the Board unless they are specifically permitted pursuant to subsection (1) above or §3-703(8) of the Code.

(b) **Enhancements.** The Board may, from time to time, provide enhancements, builds, patches, and/or upgrades to C-SMART and/or its user instructions. The Board shall provide candidates with as much advance notice of such enhancements as is reasonably possible. Following any such additions, candidates using C-SMART shall also use the most recent addition for any subsequent disclosure statement.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (b) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (a) par (1) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (a) par (1) amended City Record May 5, 2003 eff. June 4, 2003. [See T52 §1-02 Note 5]

Subd. (a) par (1) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002.

Subd. (a) par (1) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §69, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Subd. (b) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §70, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Subd. (b) amended City Record Oct. 18, 1996 §35, eff. Oct. 18, 1996. [See T52 §9-01 Note 3]

Subd. (b) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (b) open par amended City Record Oct. 10, 1995 §52, eff. Nov. 9, 1995. [See T52 §1-02 Note 4]

Subd. (c) [This part of rule was bracketed out of rule by City Record Aug. 7, 2002 amendment] amended City Record July 20, 1999 §70, eff. Aug. 19, 1999. [See Note after §9-01]

Subd. (c) par (2) amended City Record Oct. 18, 1996 §36, eff. Oct. 18, 1996. [See T52 §9-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 19, 2002:

C-SMART (§9-02(b))

From time to time during an election cycle it may be necessary to issue enhancements to C-SMART, or "patches." The Board makes every attempt to avoid issuing these patches, but has done so when it was necessary to facilitate payments to candidates or the proper disclosure of campaign finance information to the Board. The amendment confirms that the Board will provide participants with as much advance notice of such patches as is reasonably possible.

FOOTNOTES

2

[Footnote 2]: * Section heading supplied by Editor.

Rules of the City of New York

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

52 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-03 Disclosure Statement Submission Requirements.

(a) **Verification.** The treasurer or candidate shall verify that the electronic submission is true and complete, to the best of his or her knowledge, information, and belief.

(b) **Deficient submissions; legibility.** A submission is deficient and not in compliance with the disclosure requirements of the Act and these Rules if:

(1) the submission is not submitted in a form or manner authorized by the Board.

(2) the submission, or any part thereof, is in an electronic format that is infected with a virus, damaged, blank, improperly formatted, or otherwise unreadable by the Board; or

(3) the submission, or any part thereof, is in a non-electronic format that is illegible, or not in blue or black ink.

(c) **Supplemental paper submissions.** Unless otherwise required by the Board, a submission made in an electronic format, whether generated using C-SMART or otherwise, shall be accompanied by a printed version of the electronic submission. The electronic submission shall be the official submission. Any printed version of the electronic submission shall be provided solely for informational purposes and shall be placed in the public file until the electronic submission accepted by the Board is available to the public.

HISTORICAL NOTE

Section amended City Record Aug. 7, 2002 Part H Subpart 1 §6, eff. Sept. 6, 2002. [See T52 §9-01

Note 2]

Subd. (a) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) open par amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Section repealed and added City Record Oct. 18, 1996 §37, eff. Oct. 18, 1996. [See T52 §9-01

Note 3]

Section added City Record Dec. 23, 1992 eff. Jan. 22, 1993.

Subd. (c)-(d) repealed City Record Oct. 10, 1995 §53, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Subd. (c) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Rules of the City of New York

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

52 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 9 DISCLOSURE STATEMENTS INCLUDING SUBMISSIONS IN ELECTRONIC MEDIA

§9-04 Prospective Participants. [Repealed]

HISTORICAL NOTE

Section repealed City Record July 20, 1999 §71, eff. Aug. 19, 1999. [See T52 §9-01 Note 1]

Section added City Record May 19, 1994 eff. June 18, 1994.

Rules of the City of New York

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

52 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-01 Definitions.

Except as otherwise provided, the definitions set forth in §1-02 apply in this chapter. In addition, the following terms shall have the following meanings:

Ballot proposal. "Ballot proposal" shall mean any proposition, referendum, or other question submitted to the voters pursuant to the Charter or to voters in New York City only pursuant to the New York Municipal Home Rule Law or any other law.

Candidate Voter Guide statement. "Candidate Voter Guide statement" shall mean the form filed by a candidate pursuant to §10-02(b), containing biographical and other information, a candidate statement, and a photograph of the candidate for inclusion in the primary or general election Voter Guide if the candidate is on the ballot in the election.

Election. "Election" shall mean any primary or general election, other than a special election or runoff special election held to fill a vacancy, runoff primary, or election held pursuant to court order, for the office of mayor, public advocate, comptroller, borough president, or member of the City Council, or a general election in which a ballot proposal is on the ballot.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Ballot proposal definition amended City Record July 20, 1999 §72, eff. Aug. 19, 1999. [See Note 1]

Candidate Voter Guide statement definition amended City Record Aug. 7, 2002 Part H Subpart 1 §7, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Election amended City Record May 5, 2003 eff. June 4, 2003. [See Note 3]

DERIVATION

Candidate Voter Guide statement amended City Record Oct. 18, 1996 §38, eff. Jan. 1, 1997. [See Note 2]

Election amended City Record Oct. 18, 1996 §39, eff. Jan. 1, 1997. [See Note 2]

Election amended City Record Oct. 10, 1995 §54, eff. Nov. 9, 1995. [See T52 §7-05 Note 1]

Election amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

NOTE

1. Statement of Basis and Purpose in City Record July 20, 1999:

Voter Guide

The definition of "ballot proposal" is clarified to cover all proposals submitted to voters in New York City only, pursuant to any law. Section 10-01. There will be no requirement that candidate photographs submitted for inclusion in the Voter Guide must be in black and white. Section 10-02(b)(3)(ii).

If feasible, the Board will solicit and accept for possible publication "pro" and "con" statements for ballot proposals. The time period for submitting these statements is left to the Board's discretion. Section 10-02(d)(3).

2. Statement of Basis and Purpose in City Record Oct. 18, 1996: **Voter Guide Definitions** (R. 10-01) The rules clarify that the Voter Guide will not include statements from write-in candidates.

3. Statement of Basis and Purpose in City Record May 5, 2003: The amendment specifies that the Board shall not be required to publish a Voter Guide for a runoff special election. The Board's Rules already provide that the Board shall not be required to publish a Voter Guide for a runoff primary election or any special election, since these elections usually are held on extremely short notice. The same concern applies to runoff special elections.

Rules of the City of New York

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

52 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-02 Contents.

(a) **General Information.** In addition to any information that the Board determines to be useful for promoting public awareness of the voting process, City government, and the candidates and ballot proposals in an election, the Voter Guide for an election shall contain:

(1) the date of the election;

(2) the hours during which the polls are open;

(3) an explanation of the voter registration process;

(4) an explanation of how to obtain and use an absentee ballot;

(5) an explanation of how to cast a vote, including write-in votes;

(6) maps outlining the boundaries of City Council districts; and

(7) such tables of contents, graphics, and other materials which the Board determines will make the Voter Guide easier to understand or more useful for the average voter.

(b) **Candidates.** (1) The Voter Guide for an election shall contain biographical and other information for each candidate in the election who has submitted, in a timely manner, a candidate Voter Guide statement as provided in this subdivision. The following biographical information shall be included:

(i) the name of the candidate;

(ii) the political party in which the candidate is enrolled;

(iii) the previous and current public offices held by the candidate;

(iv) the current occupation and employer of the candidate;

(v) prior employment and positions held by the candidate;

(vi) the experience the candidate has had in public service;

(vii) the educational background of the candidate;

(viii) a list of the candidate's major organizational affiliations;

(ix) such other biographical and other information as may be determined by the Board and requested on the candidate Voter Guide statement.

(2) The Voter Guide shall contain concise statements on the candidate's principles, platform, or views, for each candidate in the election who has submitted, in a timely manner, a candidate Voter Guide statement which meets the requirements of this chapter. The information submitted in the candidate Voter Guide statement shall be in English and shall be translated by a translation service under contract to the Board.

(3) Any photograph of a candidate submitted in a candidate Voter Guide statement shall meet the following requirements:

(i) it is a recent photograph;

(ii) it is a photograph with a plain background;

(iii) it shows the face or the head, neck, and shoulders of the candidate;

(iv) it does not include the hands or anything held in the hands of the candidate;

(v) it does not show the candidate wearing any distinctive uniform, including but not limited to a judicial robe, or a military, police, or fraternal uniform; and

(vi) it is within such size requirements as may be determined and required by the Board.

(4)(i) A candidate Voter Guide statement shall be included in the primary election Voter Guide for each candidate named in designating petitions filed with the Board of Elections who submits a statement to the Campaign Finance Board which meets the other requirements of this chapter not later than 12 weeks prior to the primary election or such other time as prescribed by the Campaign Finance Board. Notwithstanding the foregoing, a candidate Voter Guide statement shall not be included in the primary election Voter Guide if no contested primary election for the nomination sought by that candidate will be held based on designating petitions filed with the Board of Elections. The Campaign Finance Board shall determine whether a contested primary election will be held based on information available at the time the primary election Voter Guide is sent to press.

(ii) In the case of general election candidates not named in designating petitions filed with the Board of Elections, a candidate Voter Guide statement shall be included in the general election Voter Guide for each such general election candidate who submits a statement to the Campaign Finance Board which meets the requirements of this chapter not later than 12 weeks prior to the general election or such other time as prescribed by the Campaign Finance Board. In the

case of candidates for whom a candidate Voter Guide statement was submitted for the primary election Voter Guide, that statement shall be included in the general election Voter Guide, regardless whether it was included in the primary election Voter Guide, and no additional statement or modifications to a statement or other information shall be accepted from such candidates for the general election Voter Guide.

(iii) The Board shall not accept a candidate Voter Guide statement unless it is submitted in a manner provided by the Board, includes any signatures or notarizations required by the Board, and the candidate has verified that the contents of the form are true to the best of his or her knowledge. The Board may, in its discretion, reject any Voter Guide statement, or portions thereof, it deems to contain matter that is obscene, libelous, defamatory or otherwise objectionable.

(5) Information contained in the candidate Voter Guide statement shall not exceed the length and space limitations provided by the Board. The Board may, in its discretion, require that candidate Voter Guide statements follow a consistent format, and edit statements to achieve uniformity of presentation, conformance with length and space limitations, and consistency with existing law.

(6) The candidate Voter Guide statement is a written instrument which, when filed, becomes part of the Board's records. Knowingly filing a written instrument that contains a false statement or false information is a Class A misdemeanor under New York State Penal Law §175.30. A candidate may not include any false information in his or her candidate Voter Guide statement. The candidate shall verify that his or her candidate Voter Guide statement is true, to the best of his or her knowledge.

(7) Together with a candidate Voter Guide statement, the Board shall publish one of the following notices:

(i) In the case of a participant: "Participant in the Campaign Finance Program" or language to like effect.

(ii) In the case of a limited participant: "Limited participant in the Campaign Finance Program" or language to like effect.

(iii) In the case of a non-participant: "Not a participant in the Campaign Finance Program" or language to like effect.

(c) Reserved.

(d) **Ballot proposals.** The Voter Guide for the general election shall contain:

(1) the form of each ballot proposal, as it will appear on the ballot, in the general election;

(2) an abstract of each ballot proposal; and

(3) to the extent feasible, a statement of the major arguments for and against the passage of each ballot proposal, clearly labeled as such. If feasible, the Board shall solicit and accept for possible inclusion in the Voter Guide for a general election statements of arguments for and against passage. A statement shall not be accepted by the Board unless the statement:

(i) is submitted in a form and manner provided by the Board and includes any signatures required by the Board;

(ii) conforms to the length and space limitations provided by the Board;

(iii) identifies the organization, if any, on whose behalf the statement is made. No person may submit more than one statement per ballot proposal pursuant to this paragraph.

(e) **Board determines whether to publish statements for and against ballot proposals.** With respect to

statements of arguments for and against ballot proposals, the Board, in its discretion, may determine:

(1) not to publish any such statements;

(2) not to publish any statements submitted pursuant to paragraph (d)(3);

(3) to publish all or any portion of a statement submitted pursuant to paragraph (d)(3);

(4) to edit any statement submitted pursuant to paragraph (d)(3) and publish the edited statement; and

(5) to compose and publish such statements of arguments for and against passage of ballot proposals as it deems appropriate, or to designate one or more persons to compose such statements.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (5) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (a) par (6) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (1) subpar (ix) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (b) par (3) subpar (ii) amended City Record July 20, 1999 §73, eff. Aug. 19, 1999. [See T52 §10-01 Note 1]

Subd. (b) par (4) amended City Record Aug. 7, 2002 Part H Subpart 1 §8, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (b) par (4) subpar (iii) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Subd. (b) par (5) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See Note 1]

Subd. (b) par (6) amended City Record July 20, 1999 §74, eff. Aug. 19, 1999. [See T52 §10-01 Note 1]

Subd. (b) par (7) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) repealed City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) amended City Record Aug. 7, 2002 Part H Subpart 1 §9, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (e) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

DERIVATION

Subd. (b) par (6) amended City Record Sept. 2, 1992 eff. Oct. 2, 1992.

Subd. (d) par (3) amended City Record July 20, 1999 §75, eff. Aug. 19, 1999. [See T52 §10-01

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 11, 2005:

Voter Guide (Rules 10-02(b)(4)(iii) and 10-02(b)(5))

The amendments confirm that the Board, may, in its discretion: (i) reject any statement submitted for publication in the Voter Guide containing matter that the Board deems obscene, libelous, defamatory or otherwise objectionable; and (ii) require that candidate Voter Guide statements follow a consistent format.

Rules of the City of New York

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

52 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-03 Publication and Distribution.

The Voter Guide shall be published in English and Spanish, and in such other languages as the Board may determine to be necessary and appropriate. The Voter Guide shall be distributed to each household in which there is at least one registered voter eligible to vote in the primary or general election, as the case may be, in the City. In its discretion the Board may provide for the publication and distribution of a different Voter Guide in each borough or other subdivision of New York City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 10 VOTER GUIDE

§10-04 Elections Not Held as Scheduled.

Notwithstanding any other provision of this chapter, the Board shall take such actions as are practicable to prepare, publish, and distribute a Voter Guide in a timely manner for an election that is not held as initially scheduled.

HISTORICAL NOTE

Section amended City Record Oct. 18, 1996 §40, eff. Jan. 1, 1997.

Section in original publication July 1, 1991.

Rules of the City of New York

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

52 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-01 Scope.

This chapter applies to every candidate elected to the office of mayor, public advocate, comptroller, borough president, and member of the City Council, regardless whether the elected candidate is a participant in the voluntary Campaign Finance Program. "Elected candidate" shall mean each such candidate. Except as otherwise provided, the definitions set forth in §1-02 apply in this chapter.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the

elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

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

52 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-02 Registration.

(a) Before any private funds are raised or spent for transition or inauguration into office, the elected candidate shall register each entity created and authorized to accept donations and loans, and make expenditures, for transition and/or inauguration into office on behalf of the elected candidate. The failure to make this registration in a timely manner is a violation of §3-802 of the Code, and subject to penalty thereunder.

(b) The registration shall be submitted in such form and manner as shall be provided by the Board and shall contain all information required by the Board, including:

(i) the name and address of the elected candidate and of the entity, and the date the entity was created;

(ii) the name, address, and employer of the treasurer (or other officer authorized to sign the registration) and of the liaison of the entity;

(iii) information about the entity's bank accounts; and

(iv) any signatures and notarizations as may be required by the Board; provided, however, that, to the extent that the Board permits an elected candidate to submit the registration in a non-electronic format, such registration will only be accepted by the Board if it contains an original notarized signature from both the elected candidate and the treasurer or other officer of the entity designated to sign the periodic disclosure reports required by §11-03.

(c) The elected candidate shall file a separate registration for each separate entity authorized by the elected

candidate to raise and spend private funds for transition or inauguration into office.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (b) amended City Record Aug. 7, 2002 Part H Subpart 1 §10, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

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

52 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-03 Periodic Disclosure Reports.

(a) **Forms.** The Board shall provide forms and instructions for the submission of periodic disclosure reports by entities registered under §11-02. Except as otherwise provided in subdivision (b), disclosure reports shall be submitted on the forms provided by the Board and shall contain all information for the reporting period required by the Board, including:

(1) the cash balance at the beginning and end of the reporting period;

(2) total itemized and unitemized donations, loans, and other receipts accepted during the reporting period;

(3) total itemized and unitemized expenditures made during the reporting period;

(4) for each donation accepted, the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge;

(5) the date of receipt and amount of each donation accepted or other receipt;

(6) whether a donation was made in cash;

(7) the date and amount of each donation returned to a donor;

(8) each previously reported donation for which the check was returned unpaid;

(9) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, employer, and business address, to the best of the elected candidate's, treasurer's, and entity's knowledge;

(10) the date and amount of each loan, guarantee, or other security for a loan accepted;

(11) the date and amount of each loan payment made;

(12) the amount of any portion of a loan which has been forgiven;

(13) the date, amount, name and address of the payee, purpose, and check and account number of each disbursement;

(14) the date, amount, name and address of the obligee, and purpose of each unpaid obligation incurred; and

(15) such other information as the Board may require.

All data reported in disclosure reports, amendments, and resubmissions shall be accurate as of the last day of the reporting period.

(b) **Electronic submissions.** Disclosure report submissions shall follow the submission standards applicable to participants under Chapter 9 of these rules.

(c) **Bimonthly reports.**

(1) The first report is due on the fifth business day of January, March, May, July, September, or November, whichever occurs first after the election, provided that the closing date of the first report shall not be less than six weeks after the entity was registered.

(2) The first report shall cover a period of not less than six weeks from the day the entity was registered through the last day of the calendar month immediately preceding the month in which the report is due. Each subsequent report shall cover the next two calendar months, and shall be due on the fifth business day after the close of the later month.

(3) The final report shall cover the period from the day after the conclusion of the preceding report through the day the entity terminates its activities (by complete payment of all liabilities and complete disposition of funds), and shall include such information about the disposition of any funds remaining after all liabilities are paid as shall be required by the Board. The final report is due on the fifth business day after the entity terminates its activities.

(4) Disclosure reports that fail to comply substantially with the disclosure requirements described in the Code or these rules will not be accepted by the Board. Amendments to or resubmissions of disclosure reports are prohibited unless expressly authorized or requested by the Board.

(5) The disclosure report shall contain a verification from the elected candidate, treasurer, or other officer designated in the registration that the disclosure report is true and complete to the best of his or her knowledge, information, and belief, and shall contain such signatures as may be required by the Board; provided, however, that, to the extent the Board permits a candidate to submit a disclosure report in a non-electronic format pursuant to §11-03(b) and Chapter 9 of these rules, such disclosure report will only be accepted by the Board if it contains an original signature from either the elected candidate, the treasurer, or another officer designated in the registration to sign the periodic disclosure reports required by this §11-03.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (a) open par amended City Record Feb. 29, 2000 §11, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

Subd. (b) amended City Record Aug. 7, 2002 Part H Subpart 1 §11, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

Subd. (c) par (3) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (4) amended City Record May 5, 2003 eff. June 4, 2003. [This was a technical amendment.]

Subd. (c) par (5) amended City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (c) par (5) amended City Record Aug. 7, 2002 Part H Subpart 1 §12, eff. Sept. 6, 2002. [See T52 §9-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

111 of 133 DOCUMENTS

Rules of the City of New York

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

52 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-04 Restrictions.

The following restrictions apply pursuant to §3-801 of the Code.

(a) An elected candidate shall not:

(1) authorize or register a political committee to raise or spend funds for transition or inauguration into office;

(2) use funds accepted by a political committee authorized by the candidate for transition or inauguration into office;

(3) authorize or register a previously existing entity to raise or spend funds for transition or inauguration into office;

(4) continue in existence an entity registered under §11-02 after it has paid all liabilities it incurred for transition and inauguration into office and otherwise has disposed of all funds pursuant to paragraph (f) below.

(b) An entity authorized by an elected candidate to raise or spend funds for transition or inauguration into office shall not:

(1) accept donations or other receipts from any political committee authorized by the elected candidate;

(2) accept donations from a political committee that has not registered with the Board under §3-801(3) of the Code on a form that includes the information set forth in Rule 1-04(d)(1) (political committees registered for an election cycle

pursuant to §3-707 of the Code shall be deemed registered for purposes of §3-801(3) of the Code with respect to transition and inauguration expenditures immediately following an election held in that cycle);

(3) accept donations in excess of the donation limits set forth in §3-801(2)(b) of the Code;

(4) incur liabilities or make expenditures for purposes other than transition or inauguration into office;

(5) accept any donation in cash that exceeds $100 from a single donor;

(6) incur liabilities or make expenditures after January thirty-first in the year following the election, except for (i) expenditures made to satisfy liabilities incurred prior to January thirty-first and (ii) routine and nominal expenditures associated with and necessary to satisfying such liabilities and terminating the entity, such as routine and nominal overhead costs, bank fees, taxes, and other reasonable expenses for compliance with applicable tax laws;

(7) accept any donations after all liabilities are paid; or

(8) accept any donations from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to §3-703(1)(l) of the Code or from any person whose name appears in the doing business database as of the date of such donation; provided, however, that this limitation on donations shall not apply to any donation made by a natural person who has business dealings with the city to a transition or inaugural committee where such donation is from the candidate-elect, or from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

(c) In determining compliance with the donation limits of §§3-801(2)(b) and (d) of the Code, the Board shall total all donations from a single source to all transition and inauguration entities authorized by an elected candidate, using the standards for determining whether donations are from a single source that apply to contributions from a single source under Rule 1-04(h).

(d) Loans are deemed to be donations, subject to the limits and restrictions of the Code, to the extent the loan is not repaid by the date of the elected candidate's inauguration into office.

(e)(i) Unless permitted by paragraphs (b)(6) and (7) above, any expenditure, liability, or other disbursement, and any donation, loan, or other receipt, made, incurred, or received after January thirty-first in the year following the date of a regularly scheduled general election (or after 30 days following the date of the elected candidate's inauguration, in the case of a special election), by an entity authorized pursuant to §3-801 of the Code, shall be presumed to be made, incurred, or received for the first election in which the elected candidate is a candidate following the day that it is made, incurred, or received and not made, incurred, or received for the purposes of transition or in- auguration.

(ii) Incumbent elected candidates shall be presumed to have no transition expenses.

(f) If the entity has funds remaining after all liabilities have been paid, it shall return such funds to one or more of its donors, or if that is impracticable, to the Fund.

(g) An elected candidate and his or her authorized entities may choose not to accept any monetary or in-kind donation, or any loan, guarantee, or other security for such loan, and may accept only monetary donations and advances from the elected candidate to his or her entities made out of the elected candidate's personal funds and in-kind donations made by the elected candidate to the entities; such elected candidate may donate to his or her entities with his or her personal funds or property, make in-kind donations to his or her entities with his or her personal funds or property, and make advances to his or her entities with his or her personal funds or property, without regard to the donation limits of §3-801(2)(b) of the Code. An elected candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

HISTORICAL NOTE

Section amended (inadvertently omitting section heading) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (b) amended City Record Oct. 26, 2007 §28, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (c) amended City Record Oct. 26, 2007 §28, eff. Nov. 25, 2007. [See T52 §1-02 Note 6]

Subd. (e) added City Record Aug. 21, 2003 eff. Sept. 20, 2003. [See Note 2]

DERIVATION

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (b) amended City Record Mar. 27, 2001 eff. Apr. 26, 2001. [See Note 1]

Subd. (b) amended City Record Feb. 29, 2000 §12, eff. Mar. 30, 2000. [See T52 §1-04 Note 7]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 2001:

Technical Correction

This amendment corrects a typographical error so that the Rule will prohibit a Transition and Inaugural entity from accepting any donation in cash that exceeds $100 from a single donor, as opposed to prohibiting donations exceeding $10.

2. Statement of Basis and Purpose in City Record Aug. 21, 2003: Transition and Inauguration Activities (§11-04(e)) The 2001 elections were the first elections in which the Board's transition and inauguration requirements were fully implemented. Following those elections, a number of elected candidates continued to report transition and inauguration activity well after the date of their inauguration into office. The Board is concerned that some or all of this activity was actually campaign activity. Not only does the use of a transition and inauguration entity for campaign purposes violate Administrative Code §3-801, but it also improperly insulates such activity from the reach of the New York City Campaign Finance Act and unfairly benefits incumbents, who are the only individuals permitted to establish transition and inauguration entities. The rule provides that activity undertaken through a transition and inauguration entity after January thirty-first in the year following the elected candidate's election to office (or after 30 days following the date of the elected candidate's inauguration, in the case of a special election) is presumed to be undertaken for the first election in which the elected candidate is a candidate following the date of the activity, and is not for the purposes of transition or inauguration. Additionally, the rule makes clear that in the future incumbent elected candidates, who already have government offices and staff, may not seek to use a transition and inauguration entity to fund expenses, such as office furniture, which properly should be made out of their government office budgets (although some such expenditures could be a legitimate transition expense for newly elected candidates). As a result, the rule also provides that incumbent elected candidates shall be presumed to have no transition expenses.

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

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

52 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 52 Campaign Finance Board

CHAPTER 11 TRANSITION AND INAUGURATION ACTIVITIES*1

§11-05 Records and Audit.

(a) Each entity required to be registered under §11-02 must exercise reasonable care to keep records that enable the Board to verify the accuracy of disclosure reports and compliance with all requirements of §3-801 of the Code and this chapter. The records kept shall be clear, accurate, and sufficient to show an audit trail that demonstrates compliance. The records shall be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board.

(b) The records to be kept shall include:

(1) Copies of all deposit slips.

(2) A photocopy of each check or other monetary instrument representing a donation or other monetary receipt.

(3) A record of all efforts made to ascertain each donor's residential address, employer, business address, and occupation and to identify fully the intermediary, if any, for each donation.

(4) For each in-kind donation, a receipt or other written record showing how the value of the donation was determined.

(5) Each bill for goods or services provided.

(6) Written documentation for each loan received, loan repayment, and loan forgiven.

(7) A monthly billing statement or customer receipt for each disbursement to a credit card or charge card account showing vendors underlying the disbursement.

(8) The following from banks and other depositories relating to accounts:

(i) all periodic bank or other depository statements in chronological order, maintained with any other related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds; and

(ii) all returned and cancelled disbursement checks.

(c) All of the entity's records are subject to Board review and shall be made available to the Board upon its request, within such time as shall be specified by the Board.

(d) The entity may maintain a petty cash fund of no more than $500 out of which they may make disbursements not in excess of $100 to any person or entity per purchase or transaction. If a petty cash fund is maintained, the entity shall maintain a petty cash journal including the name of every person or entity to whom any disbursement is made, as well as the date, amount, and purpose of the disbursement.

(e) The entity shall retain all records and documents required to be kept for six years after the date of its registration.

(f) Reserved.

HISTORICAL NOTE

Section added City Record July 20, 1999 §76, eff. Aug. 19, 1999. [See Chapter 11 footnote]

Subd. (e) relettered (formerly subd. (g)) City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (f) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

DERIVATION

Subd. (e) repealed City Record Feb. 11, 2005 eff. Mar. 13, 2005. [See T52 §1-01 Note 1]

Subd. (e) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

Subd. (f) amended City Record Nov. 19, 2002 eff. Dec. 19, 2002.

Subd. (f) amended City Record Aug. 7, 2002 Part D Subpart 5, eff. Sept. 6, 2002. [See T52 §3-03 Note 1]

FOOTNOTES

1

[Footnote 1]: * Provisions of City Record July 20, 1999 Explanation, Basis and Purpose:

Transition and Inauguration Activities

These rules apply to all candidates elected to the office of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether the candidate is a participant in the voluntary Campaign Finance Program. Before any private funds are raised or spent for transition or inauguration into office, the elected candidate is required to register each entity authorized to engage in financial activity for a transition and/or inauguration into office. Section 11-02. These entities would file bimonthly disclosure reports on the fifth business day in January, March, May, July, September, and November, until the entity terminates. Section 11-03.

An elected candidate may not use a political committee or pre-existing entity for transition or inauguration activities, and a transition/inauguration entity may not:

· continue in existence after it has paid all liabilities for transition and inauguration into office;

· accept funds from any political committee authorized by the elected candidate;

· accept donations from a political committee that has not registered with the Board;

· accept donations in excess of legal limits (including the single source standards);

· incur liabilities or make expenditures for purposes other than transition or inauguration into office; or

· accept any donation in cash that exceeds $10.

Section 11-04.

Recordkeeping requirements are similar to those for campaigns participating in the voluntary Campaign Finance Program. Section 11-05.

Rules of the City of New York

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

53 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-01 Valuable Gifts.

(a) For the purposes of Charter §2604(b)(5), a "valuable gift" means any gift to a public servant which has a value of $50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter §2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.

(b) As used in subdivision (a) of this section, (1) "relative" shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are "affiliated" if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common that owns at least 25 percent of the shares of each firm; (3) "firm," "spouse," and "ownership interest" shall have the meaning ascribed to those terms in §2601 of the Charter; (4) "domestic partner" means a domestic partner as defined in New York City Administrative Code §1-112(21).

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties.

(d) For the purposes of Charter §2604(b)(5), a public servant may accept awards, plaques and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.

(e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(1) when offered during a meeting which the public servant is attending for official reasons;

(2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;

(4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; and

(5) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(f) For the purposes of Charter §2604(b)(5), a public servant may:

(1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(2) be present at a professional or educational program as a guest of the sponsoring organization;

(3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter §2601(8), with, or a matter before, the public servant's agency;

(5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

(g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature,

when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.

(h) (1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

(i) the trip is for a City purpose and therefore could properly be paid for with City funds;

(ii) the travel arrangements are appropriate to that purpose; and

(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

(i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

(j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

(k) (1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Penal Law.

(2) The provisions of this section shall be read in conjunction with the provisions of Charter §2604(b)(2) and §1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); §2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and §2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section added City Record July 13, 1990. [See Note 5]

Subd. (a) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (b) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (c) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (d) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (e) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (f) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (g) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (h) amended City Record Dec. 27, 2006 §1, eff. Jan. 26, 2007. [See Note 6]

Subd. (i) amended City Record June 9, 2000 eff. July 9, 2000. [See Note 1]

Subd. (j) relettered (former subd. (i)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (k) added City Record June 9, 2000 eff. July 9, 2000. [See Note 1]

DERIVATION

Subd. (a) amended City Record Oct. 8, 1997 eff. Nov. 7, 1997. [See Note 3]

Subd. (b) added City Record Oct. 8, 1997 eff. Nov. 7, 1997. [See Note 3]

Subd. (b) par (4) amended City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Note 4]

Subd. (c) relettered (former subd. (b)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (d) relettered (former subd. (c)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (e) relettered (former subd. (d)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (f) amended City Record Dec. 15, 2000 eff. Jan. 14, 2001. [See Note 2]

Subd. (f) relettered (former subd. (e)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (g) amended City Record Dec. 15, 2000 eff. Jan. 14, 2001. [See Note 2]

Subd. (g) relettered (former subd. (f)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (h) relettered (former subd. (g)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

Subd. (i) relettered (former subd. (h)) City Record Oct. 8, 1997 eff. Nov. 7, 1997.

NOTE

1. Statement of Basis and Purpose in City Record June 9, 2000:

Statutory Authority: Sections 2603(a) and 2604(b)(5) of the New York City Charter.

Statement of Basis and Purpose of the Amendment: Charter §2604(b)(5) provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

The purpose of the amendment to §1-01(i) is to alert public servants to their reporting and other obligations with respect to gifts. The current rule, §1-01(i), provides that public servants should return valuable gifts to the donor, and report such gifts to the inspector general ("IG") of the public servant's agency if it is not practical to return the gifts. This provision has allowed situations where an employee of a mayoral agency could receive and return a gift and report nothing to the IG, thereby complying with the Board's Valuable Gift Rule, but violating his or her reporting obligations

under Executive Order No. 16 (1978), which imposes on public servants in mayoral agencies an affirmative obligation to report to the IG's of their respective agencies, the offer and/or receipt of all gifts that may involve corrupt or other criminal activity or conflict of interest, directly and without undue delay, whether or not the gift is returned to the donor. The amendment corrects this anomaly, helps City employees to comply with their various reporting obligations by highlighting those other obligations, and eliminates possible confusion among public servants. The purpose of the amendment adding a new subdivision (k) of the Board's Valuable Gift Rule is to inform public servants that the receipt and acceptance of gifts or gratuities may give rise to liability under other provisions of Chapter 68 of the City Charter as well as other sources of law, such as the criminal law. This proposed change would serve to reinforce for public servants their obligation to exercise caution before accepting any gift of any value because, whether or not the gift meets the $50 "valuable gift" definition in subdivision (a), acceptance may constitute a violation of other provisions of law. For example, a public servant should never accept any gift in exchange for taking any official action, even though the gift may be worth less than $50 and would not be deemed a "valuable gift" under subdivision (a) (assuming no other gifts to be aggregated for a twelve-month period), because this conduct would constitute a violation of Charter §2604(b)(13), which prohibits public servants from receiving compensation except from the City in exchange for performing any official duty, and could also violate the criminal law. **See, e.g.,** New York State Penal Law §200.10. In addition, accepting a gift of any value can violate Charter §2604(b)(3), which prohibits public servants from using or even attempting to use their official positions to obtain a financial gain or other privilege or private or personal advantage for themselves or those associated with them. In response to the public hearing notice on the proposed rule, the Board received comments from the Comptroller's Office and the City Council. While the comments from the Comptroller's office were insightful, the Board and the Comptroller's Office agreed that their suggestions did not pertain to the thrust of the instant rule change. The Board was persuaded by the City Council's comment that the inclusion of the phrase "the Department of Investigation assigned to" after "the inspector general of" in subparagraph (i) of the rule, as initially proposed by the Board, raised questions regarding the separation of powers among the various branches of government and was unnecessary. Therefore, the Board left the pertinent language of that subparagraph intact. See Appendix A for illustrative examples of provisions of law that may apply to gifts. Appendix A Illustrative Examples of Provisions of Law That May Apply to Gifts I. Chapter 68 of the New York City Charter §2604(b)(2) No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. §2604(b)(3) No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. §2604(b)(5) No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions. §2604(b)(13) No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action. Violation of any of the foregoing provisions is a misdemeanor. **See** Charter §2606. II. Conflicts of Interest Rules of the Board §1-13 Conduct Prohibited by City Charter §2604(b)(2) (a) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City. (b) Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. (c)(1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency. (2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity. (d) It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly induce or cause another public servant to

engage in conduct that violates any provision of City Charter §2604. (e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivisions (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivisions (a), (b), or (c) of this section. III. Penal Law Provisions 200.10 Bribe receiving in the third degree A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced. Bribe receiving in the third degree is a class D felony. 200.25 Receiving reward for official misconduct in the second degree A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant. Receiving reward for official misconduct in the second degree is a class E felony. 200.35 Receiving unlawful gratuities A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation. Receiving unlawful gratuities is a class A misdemeanor. 200.50 Bribe receiving for public office A public servant or a party officer is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office. Bribe receiving for public office is a class D felony. 195.00 Official misconduct A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

IV. Executive Order No. 16 (1978)

§4(d)

Every officer and employee of the City shall have the affirmative obligation to report, directly and without undue delay, to the Commissioner or an Inspector General any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any officer or employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty.

2. Statement of Basis and Purpose in City Record Dec. 15, 2000: Charter §2604(b)(5) provides: No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions. As provided for by Charter §2604(b)(5), the Board has promulgated Rules §1-01, which, **inter alia,** delineates circumstances under which the receipt of gifts by public servants will and will not violate Chapter 68. Section 1-01(f) is, in the main, particularly concerned with ceremonies, functions, programs, and other occasions for which an admission fee is charged, and addresses when a public servant may accept a "ticket" at no charge. Section 1-01(f)(4) addresses the annual public affair of a business association or a charitable organization, and permits the attendance at such event when the free ticket comes from the sponsoring organization, unless the sponsoring organization is a charitable organization which has a

contract with the public servant's agency. By this amendment to §1-01(f)(4), the Board intends to narrow the range of permitted gifts, because a public servant's agency may have many dealings with a private organization beyond a contractual relationship. For example, a community board may well have highly controversial matters before it involving for-profit and not-for-profit applicants; or the Finance Department may be considering the application from a charitable organization for an exemption from a real property tax. For a public servant at the involved community board, or at the Finance Department, to accept a free ticket to the annual affair of such an organization raises the appearance of impropriety. To limit the rule's proviso simply to the case of a contractual relationship is, the Board believes, insufficient. The amended rule therefore would prohibit the acceptance of such free tickets from an organization which has dealings with the public servant's agency, not merely from those organizations with a contract with his or her agency. The language chosen to define those dealings, namely, "business dealings . . . with, or a matter before," are terms contained in Chapter 68. "Business dealing" is indeed defined in Charter §2601(8). "Matter before" is a term used in Charter §2604(a)(1)(a), 2604(b)(1)(a), and 2604(b)(1)(b). Finally, it should be noted that the amendment would not change the substance of Rules §1-01(f)(5) and §1-01(g), whose texts are also set forth above. Those sections permit, respectively, attendance at functions when the public servant's agency head so approves in writing and attendance by elected officials at the annual public events of certain organizations, when invited by the sponsoring organization. Thus, if the application of the amendment to a particular case would not permit acceptance of the gift ticket, these provisions would, in all likelihood, permit attendance in those instances when the attendance is indeed in the interests of the City. In response to the notice of opportunity to comment on the proposed rule, the City Council asked two related questions: the Board's interpretation, as applied to the activities of the Council, of the terms "business dealings" and "matters before"; and, for attendance no longer permitted under the proposed amendment to §1-01(f)(4), the identity, for the central staff of the Council, of the "authorizing" elected official within the meaning of §1-01(g). With respect to the first, the Board means no change in its historic interpretation of the Charter phrases "business dealings" and "matters before." In that regard, it should be noted that individuals who, and organizations which, merely lobby or advocate positions before the Council do not have "business dealings with" or "matters before" the Council. In contrast, individuals and organizations with Council business dealings or with matters before the Council include vendors to the Council; owners of property which is before the Council pursuant to the Charter's land use review process (**see** Charter §197-d); and organizations which receive direct appropriations from the Council (e.g., line item appropriations or discretionary funding as described in Title 9, Rules of the City of New York, §1-01(e)). With regard to the identity of the authorizing official, for the central staff of the Council the proper authorizing elected official for the purpose of §1-01(g) is the Speaker, and the Board adds a sentence to the rule to that effect. For the aides to the individual Council members, the authorizing official is that Council member. Reason the proposed rule was not anticipated and included in the regulatory agenda: The Board did not consider this matter until well into the current fiscal year.

3. Statement of Basis and Purpose in City Record Oct. 8, 1997: Charter §2604(b)(5) provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

The Board's current gift rule defined "valuable gift" to mean any gift to a public servant, in whatever form, that has a value of $50 or more. Board Rules §1-01(a). The rule also requires that the public servant must report to his or her agency head gifts from a single source within a calendar year which individually are less than $50 but which together exceed $50. Id. The Board has consistently interpreted this rule to mean that individual gifts from a single donor within a twelve-month period must be aggregated for purposes of determining whether the threshold amount was exceeded. However, the Board believes that this interpretation should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or by persons or firms doing business with the City. In addition, the Board has determined that the disclosure requirement in the rule should be eliminated because it has proven ineffective. Agencies may, if they wish, impose more stringent requirements. For example, some agencies prohibit their employees from accepting gifts of any size from persons doing business with the City. Accordingly, the amendment (1) makes explicit

that, for purposes of the Charter's prohibition on receipt of valuable gifts from persons doing business with the City, individual gifts from a single donor or related donors within a twelve month period shall be aggregated, and (2) deletes the requirement that recipients of gifts disclose them to their agency head, and (3) recharacterizes the year-long period for determining a "single gift" as "twelve-month period," rather than "calendar year." Related donors include the immediate family of the donor (spouse, children, grandchildren, parents, grandparents, brothers, sisters, and in-laws) and officials or employees of the same firm or of firms that stand in a parent-subsidiary relationship or that are subsidiaries of the same parent or that have a controlling shareholder in common. However, gifts of related donors are only aggregated if the public servant-recipient knows or should know of the relationship. This requirement will avoid inadvertent violations of the rule. The amendment employs the phrase "twelve month period" rather than "calendar year" to prevent, for example, the acceptance of a $49 gift on December 31 and another on January 1.

4. Statement of Basis and Purpose in City Record Dec. 30, 1998: The amendments are required in order to bring the Board's rules into conformity with Local Law No. 27 of 1998, which extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York.

5. Statement of Basis and Purpose in City Record July 13, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(5) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a valuable gift. For the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law, New York City Charter §2604(b)(5) provides that no public servant shall accept any valuable gift from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City.

6. Statement of Basis and Purpose in City Record Dec. 27, 2006: On June 13, 2006, Mayor Michael Bloomberg signed into law Local Law No. 16 of 2006. This law amends the New York City Administrative Code in relation to gifts by lobbyists. See Ad. Code §3-225, as added by Local Law No. 16 of 2006, effective December 10, 2006. The newly added §3-225 of the Administrative Code provides that "No person required to be listed on a statement of registration pursuant to §3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant." **Id.** Section 3-228 of the Code further provides that: The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including **de minimis** gifts, such as pens and mugs, gifts that public servant may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants. Ad. Code §3-228, as added by Local Law No. 16 of 2006, effective December 10, 2006. The Board was, therefore, required to adopt rules defining prohibited gifts from lobbyists and exceptions including **de minimis** gifts, gifts that public servants may accept as gifts to the City, and gifts from family members and close personal friends on family or social occasions within the meaning of §3-225 of the Administrative Code. In addition, §3-228, quoted above, directed that, to the extent practicable, these rules be consistent with the Board's rules and opinions concerning the receipt of gifts by public servants. In its consideration of the new rules for gifts from lobbyists, the Board accordingly examined its existing rule on gifts to public servants, its Valuable Gift Rule, §1-01 of Chapter 1 of Title 53 of the Rules of the City of New York. In examining §1-01, the Board identified a few provisions which the Board concluded should be amended. The instant rulemaking therefore includes both these few amendments to §1-01, the existing Valuable Gift Rule governing **receipt** of gifts by public servants, and the new §1-16 governing the **giving** of gifts by lobbyists, and, as mandated by Local Law 16, aims to conform these provisions to the extent practicable. Amendments to Existing Board Rule §1-01 The Board adopts four amendments to §1-01: · Section 1-01(d) currently permits the acceptance of publicly presented awards and plaques for public service when the award or plaque is valued at less than $150.00. This subdivision is amended by dropping any reference to dollar amount and instead providing that the award, plaque, or other similar item has no substantial resale value. This amendment is intended to make clear that, for example, an engraved item costing a few hundred dollars would typically be permissible, while a cash gift of $100.00 would not fall within the exception. · The prior §1-01(e)(5) is repealed. That

paragraph provided, in summary, that when it is customary business practice to hold a meeting over a meal, and customary business practice for one party to pay for the other, and payment by the public servant would be "inappropriate," the acceptance of the meal by the public servant is permissible. In reviewing this provision, the Board concluded that it is difficult to identify circumstances where payment by the public servant would be inappropriate, and indeed can much more readily contemplate circumstances where payment by a City vendor, for example, would not be appropriate. The Board has no record of having approved the acceptance of a meal pursuant to this provision and concluded that retaining the paragraph does not serve a City purpose. · Section 1-01(f)(4) is amended by deleting the word "annual" from the description of the public events or functions for which, under the described conditions, a public servant might accept free admission. Over the years the Board has observed that some organizations have significant public events more frequently than annually and that not infrequently these are events where attendance by certain public servants would advance the interests of the City. · Section 1-01(f)(4) is further amended by correcting what appears to have been a small, unintended drafting error. That provision, as previously written, permitted the attendance at annual public events of an organization composed of representatives of "business, labor, professions, news media or organizations of a civic, charitable or community nature," when the public servant is invited by the sponsoring organization, **except when** the invitation was from a "civic, charitable or community" organization that has business with or matters before the public servant's agency. There does not appear to be any reason for this limiting proviso to have included only "civic, charitable or community" organizations, and not, for example, to have included the other types of inviting organizations, which also might have business with a public servant's agency. The amendment accordingly makes clear that the exception which this subdivision offers is not be available when the inviting organization is **any** organization with dealings with the public servant's agency. Section 1-16 The remainder of this rulemaking consists of the Board's response to Local Law 16 of 2006, that is, to give clear guidance regarding the prohibition of gifts by lobbyists to public servants and the exceptions to that prohibition. This is embodied in a new Rule 1-16 of Chapter 1 of Title 53 of the Rules of the City of New York, whose text is set forth above, and which in summary provides the following: Section 1-16(a): This subdivision incorporates provisions of the newly enacted prohibition against persons required by Ad. Code §3-213(c) to be listed on a lobbying registration statement offering or giving a gift to a public servant. Section 1-16(b)(1): This paragraph reiterates the categories of individuals required by Ad. Code §3-213(c) to be listed on a lobbyist registration statement. Section 1-16(b)(2): This paragraph defines "lobbyist" to have the same meaning as used in Ad. Code §3-211, the definitions section of the City's lobbying law. Section 1-16(b)(3): This paragraph defines the term "offer" to mean the attempt or offer to give a gift, or the attempt or offer to arrange for the making of a gift. Section 1-16(b)(4): This paragraph defines "give" to mean the tender of a gift, acting as an agent in the making of a gift, or arranging the making of a gift. This language tracks the lobbyist gift ban set forth in California Government Code §86203. This explicit prohibition against acting as an agent in the making of a gift would, for example, make clear that it would not be a successful defense to a charge of making an impermissible gift that a lobbyist was being reimbursed by his or her firm or client and therefore was not the true gift giver. Section 1-16(b)(5): This paragraph defines "gift." It repeats the language of Board Rules §1-01(a), but replaces that provision's reference to a value of $50.00 or more with a prohibition against gifts of "any value whatsoever." Section 1-16(c): This subdivision identifies those gifts that will not violate the prohibition of §3-225. In particular, as required by §3-228, it lists the exceptions for **de minimis** gifts, for gifts from family and close friends, and for gifts to the City, in each case attempting whenever practicable to be consistent with Board Rules §1-01 governing what gifts public servants may receive. Section 1-16(c)(1): This paragraph defines permissible **de minimis** gifts to be promotional items, including mugs, t-shirts, and similar items, with no substantial resale value and bearing an organization's name, logo, or message. Section 1102(22)(a) of Title 42 of the Louisiana Revised Statutes provides a similar exception for "promotional items having no substantial resale value." Section 1-16(c)(2): This paragraph on permissible gifts from a family member or a close personal friend takes its language from Board Rules §1-01(c) and is intended to be consistent with that rule. Section 1-16(c)(3): This paragraph, regarding acceptable awards, plaques, and other similar items, mirrors the above proposed amended Board Rules §1-01(d). Section 1-16(c)(4): This paragraph on gifts to a public servant of free meals and refreshment when the public servant is conducting City business mirrors the above amended Board Rules §1-01(e). Section 1-16(c)(5): This paragraph mirrors the language of Board Rules §1-01(f)(1). Section 1-16(c)(6): This paragraph tracks the language of Board Rules §1-01(f)(2). Section 1-16(c)(7): This paragraph tracks Board Rules §1-01(f)(3). Section 1-16(c)(8): This paragraph, concerning attendance at annual event of various types of organizations at the

invitation of the sponsoring organization, tracks-with one significant exception-the above amendment to Board Rules §1-01(f)(4). This provision differs from §1-01(f)(4) in that it does not include the limiting condition that the sponsoring organization may not have business with the public servant's agency. The Board deletes this limiting condition from §1-16(c)(8) because many not-for-profit organizations, for example, wish to invite leadership of the City agency supporting their work to their annual fundraising event, and agency leadership may in general permissibly attend such public events pursuant to the provisions of Board Rules §1-01(f)(5), which permits such attendance on the written certification of an agency head or deputy mayor that the attendance is in the interests of the City. To forbid lobbyists to extend such invitations may, however, in some cases severely restrict, if not effectively prevent, any such invitation, because in some smaller organizations in particular many if not most of the organization's executive staff are named in the organization's lobbyist registration statement. Thus, to say that the invitation must, as §1-01(f)(4) provides, come from the sponsoring organization but to forbid the leadership of the organization to extend such invitations appears contrary to the legislation's directive that, whenever practicable, the "receiving" provisions of Chapter 68 and the "giving" provisions of this newly enacted legislation be synchronized. Section 1-16(c)(9): This paragraph, regarding the attendance by elected officials and their designated staff at certain public events when invited by the sponsoring organization, tracks the language Board Rules §1-01(g). The Board notes that, with the above described deletion from §1-16(c)(8) of the limiting condition against gifts from those with matters before a public servant's agency, §1-16(c)(9) might appear redundant. The Board indeed does not suggest any substantial difference exists between the affairs or functions described in these two provisions, but nevertheless has determined to retain both provisions in deference to the legislative directive that to the extent practicable these restrictions on gift giving synchronize with the Board's existing rules on receipt of gifts by public servants. Section 1-16(c)(10): This paragraph, regarding permissible gifts of travel related expenses for City business purposes, tracks Board Rules §1-01(h)(1). Section 1-16(d): This subdivision is simply a caution that conduct not prohibited by Local Law 16 of 2006 may nevertheless be prohibited by other legislation, most notably by the New York State Lobbying Act. It should be noted that the Board has not included in §1-16 an analog to Board Rules §1-01(f)(5), which permits attendance at events or functions where the agency head or deputy mayor provides written certification that attendance is in the interests of the City. The Board does not view the extension to lobbyists of that exception to the gift ban to be consistent with the legislative intent to restrict gifts from lobbyists. Moreover, as a practical matter, the agency head certification of §1-01(f)(5) would provide little aid to the lobbyist/donor, since the prospective donor typically could not know whether the agency head would indeed certify that the public servant's attendance would be in the City's interests. The Board conducted a public hearing on December 8, 2006, at which time it heard testimony from the Executive Director of Citizens Union and from the Ethics and Employment Counsel to the City Council. Their testimony, which tracked written submissions they also presented, were generally supportive of the Board's proposal. Citizens Union noted a concern that these rules be interpreted to permit the continued presence of elected and appointed officials at annual events, receptions, educational breakfasts, and the like hosted by civic groups and non-profits that are registered as lobbyists, stating that such events, where food and beverages are often served, provide an important venue for the exchange of ideas and information among those committed to making New York a better city. It is the Board's view that Rules §§1-16(c)(4) through (c)(9) will permit the offer of invitations to such events in all appropriate cases and that the analogs to these provisions in Rules §1-01 will permit public servants to receive these invitations in all appropriate cases. The Board also received a joint written comment from the Human Services Council of New York, the Lawyers Alliance for New York, and the Nonprofit Coordinating Committee of New York. That comment makes two specific requests: first, that the Board clarify precisely who is covered by the gift ban, and, second, that the gift ban permit the offer of "goody bags" or "gift bags" at charitable events in cases where the bags contain more than the promotional items permitted under Rules §1-16(c)(1). In each case the Board appreciates the concerns raised, but believes that in each case the question is better dealt with through advisory opinion than through rulemaking. In the case of further identifying those persons required to be listed in a registration statement, an advisory opinion might be sought from the Office of the Clerk, or from the Board, and in either case these agencies will likely consult with each other in any response. In the case of the offer of "goody bags," the Board notes that it addressed the question of a public servant's **receipt** of gift bags by advisory opinion (**see** Board Opinion No. 2006-2).

Rules of the City of New York

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

53 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-02 Public Servants Charged with Substantial Policy Discretion.

(a) For purposes of Charter §2604(b)(12) and §2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads shall:

(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and

(3) notify these public servants in writing of the restrictions set forth in Charter §2604(b)(12) and §2604(b)(15) to which they are subject.

If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.

(b) Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

HISTORICAL NOTE

Section amended City Record May 30, 2001 eff. June 29, 2001. [See Note 1]

Subd. (a) amended City Record Jan. 30, 2004 eff. Feb. 29, 2004. [See Note 3]

DERIVATION

Section added City Record July 13, 1990. [See Note 4]

Section amended City Record Sept. 23, 1997 eff. Oct. 23, 1997. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 30, 2001:

Section 2604(b) of the New York City Charter contains two provisions imposing restrictions on political fundraising and the holding of political party office by certain high-level public servants. Included within the restriction are enumerated officials as well as those public servants who are charged with "substantial policy discretion as defined by rule of the board." Specifically, §2604(b)(12) provides:

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

Section 2604(b)(15) provides:

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

Pursuant to those Charter provisions, the Board adopted §1-02 of Title 53 of the Rules of the City of New York, set forth above, defining "substantial policy discretion" and requiring each agency head to designate the public servants within the agency having such discretion, to file annually with the Board a list of those public servants, and to notify them of the restrictions set forth in Charter §§2604(b)(12) and 2604(b)(15). The rule further provides that the list supplied by the agency to the Board is subject to review and modification by the Board.

Although, as reflected in the Board's rule, the Charter vests in the Board the ultimate authority to determine whether any particular public servant is in fact charged with substantial policy discretion within the meaning of Chapter 68, prudent use of the Board's limited resources dictates that the Board not expend the enormous amount of staff time that would be required to review the actual duties of all higher level public servants throughout City service to determine whether the lists submitted by the agencies are accurate and complete. Instead, the Board currently reviews each list to determine whether it appears to include the types of positions required by the rule and then relies upon the public, the media, and other public servants to apprise the Board of possible errors in the lists submitted by agencies.

Thus, for example, if the media reports that a public servant, whose name does not appear on his or her agency's list, has hosted a fundraiser for a candidate for elective City office, the Board may investigate whether the duties and responsibilities of that public servant are such that he or she in fact possesses substantial policy discretion. Similarly, the Board sometimes receives a complaint that a public servant listed by his or her agency as having substantial policy discretion has acted in violation of Charter §2604(b)(12) or §2604(b)(15) but, upon investigation, determines that the public servant in fact possesses no such discretion and should be deleted from the agency's list.

Accordingly, in policing compliance with the requirements of Charter §§2604(b)(12) and 2604(b)(15), the Board must depend largely upon inquiries, reports, and complaints from the public, the media, and other public servants. Those communications, however, can prove meaningful only if the contents of the agencies' lists are available for public inspection. Therefore, the Board is amending its substantial policy discretion rule to provide for such public availability.

2. Statement of Basis and Purpose in City Record Sept. 23, 1997: Charter §2604(b)(12) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from soliciting political contributions for candidates for elective City office or for City elected officials who are running for any elective office. Charter §2604(b)(15) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from holding certain political party positions. Section 1-02 of the Board's rules sets forth the Board's definition of "substantial policy discretion" for purposes of those Charter provisions. While that rule has worked reasonably well in practice, one aspect of the rule has proven impractical and unnecessarily burdensome on agency heads: the requirement that agency heads update their list of substantial policy discretion titles or positions within 30 days of any change in the list. The Board has thus decided to require only an annual update. In addition, the Board has consistently interpreted its substantial policy discretion rule (1) to apply to members of boards and commissions, (2) to require that the agency's list include not only the titles or positions but also the names of the employees who, in the opinion of the agency head, fall within the rule, and (3) to recognize that the Charter vests in the Board the ultimate authority to determine whether any particular title, position, or person is in fact charged with substantial policy discretion within the meaning of Chapter 68. The Board, however, believes that these interpretations of the substantial policy discretion rule should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or political party leaders. In regard to the inclusion of members of boards and committees, it should be noted that the rule does not apply to unpaid members of advisory committees-that is, to members of advisory committees who are not entitled to receive per diem or other compensation-since such members are not subject to Chapter 68. See Charter §§2601(1), (19).

3. Statement of Basis and Purpose in City Record Jan. 30, 2004: Statutory Authority: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter. Statement of Basis of Purpose of the Amendment: Local Law 43 of 2003 amended the City's Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a "policymaking position . . ., as defined by rule of the conflicts of interest board. . . ." Ad. Code §12-110(b)(3)(a)(3). The Board had adopted a rule, Section 1-14 of Title 53 of the Rules of the City of New York, stating that a public servant shall be deemed to hold a policymaking position, within the meaning of the Financial Disclosure Law, if the public servant is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York. Section 1-02 requires that City agencies file with the Board by September 30 each year their annual statement of the names and positions, or titles, of those employees within the agency who have substantial policy discretion. That September 30 deadline does not mesh with the collection cycle for financial disclosure reports, as agencies must identify their financial disclosure filers by the end of February each year in order to enable distribution of the financial disclosure forms to filers in time for the May 1 filing deadline. Thus, the amendment would change the September 30 deadline to February 28.

4. Statement of Basis and Purpose in City Record July 13, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(12) and §2604(b)(15) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a public servant charged with substantial policy discretion. For the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law, New York

City Charter §2604(b)(12) provides that a public servant who is charged with substantial policy discretion shall not directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the City or for any elected official who is a candidate for any elective office. New York City Charter §2604(b)(15) provides that a public servant charged with substantial policy discretion may not be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party.

Rules of the City of New York

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

53 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-03 Definition of Lesser Political Office Than That of Assembly District Leader Which May be Held by Members of the City Council.

For purposes of Charter §2604(b)(15), the definition of a political office which is a "lesser political office" than that of assembly district leader includes:

(a) membership on a county committee;

(b) membership on a county executive committee;

(c) membership on a state committee; and

(d) membership on a national committee.

HISTORICAL NOTE

Section amended City Record July 16, 1999 eff. Aug. 15, 1999. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Section added City Record Apr. 27, 1990. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 16, 1999:

Charter §2604(b)(15) provides:

No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

Section 1-03, the Board's rule defining "lesser political office", currently identifies three "lesser" offices which members of the City Council may hold: (a) member of a county committee; (b) member of a county executive committee; and, (c) member of a state committee. An examination of the history of Charter §2604(b)(15), which was adopted following the 1989 Charter revision process, and of the Rules §1-03, which was promulgated on the heels of the Charter revision, reveals no consideration of the national committees of political parties in the discussion of what "lesser political offices" members of the City Council might be permitted to hold. The Board thus now considers, for the first time, whether membership in a national committee of a political party is, within the meaning of §2604(b)(15), a lesser political office than district leader. Section 2604(b)(15) was enacted following the municipal corruption scandals of the 1980s, and had, in limiting certain high-ranking officials from holding high party office, two primary purposes: to prevent dual loyalty, and to prevent the undue concentration of power. For further discussion of its history, see **Golden v. Clark,** 76 N.Y.2d 618, 563 N.Y.S.2d 1 (1990), where the Court of Appeals rejected a constitutional challenge to §2604(b)(15). In examining the question, therefore, of whether a national committee member is a lesser position than district leader, the Board looks to the evils sought to be prevented, and in particular to what real power a national committee member exercises in New York City government or politics. In fact, in New York City, while district leaders elect the powerful county leaders, and while state committee members provide access to the primary ballot, otherwise available only through the petition process, national committee members exercise little if any local political power. The national committees (whose members number in the low hundreds) are charged with running the affairs of their party between national conventions and also fill, in the unlikely event that a vacancy occurs, a vacated nomination for president or vice-president. These duties, however, give the members of the national committee of a political party little, if any, significant political power in New York City, and in any event less power than the already permitted positions of district leader, county committee member, county executive committee member, or state committee member. The Board accordingly amends §1-03 to add membership on a national committee of a political party to the list of those party positions which a member of the City Council may hold.

2. Statement of Basis and Purpose in City Record Apr. 27, 1990: Pursuant to the authority vested in the Conflicts of Interest Board by §2604(b)(15) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a "lesser political office" than that of assembly district leader which may be held by members of the City Council, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(b)(15) provides that a member of the council may serve as an assembly district leader or hold any lesser political office. The requirement that this regulation not become effective until thirty days after publication shall not apply because, pursuant to Charter §1043(e)(1)(c), the Conflicts of Interest Board has found in writing that substantial need exists for earlier implementation due to the January 1, 1990 effective date of certain provisions of the revised Chapter 68 of the Charter and the Mayor has approved the Board's finding by letter dated December 4, 1989.

Rules of the City of New York

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

53 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-04 Definition of a Firm Whose Shares are Publicly Traded.

For purposes of Charter §2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the Securities Exchange Commission for public trading on national securities exchanges or over-the-counter markets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section added City Record Sept. 21, 1990. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 21, 1990:

Pursuant to the authority vested in the Conflicts of Interest Board by §2604(a)(1)(b) of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a firm whose shares are publicly traded, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(a)(1)(b) provides that no regular employee of the City shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City, except if such interest is in a firm whose shares are publicly traded.

Rules of the City of New York

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

53 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-05 Definition of Blind Trust.

(a) For purposes of Charter §2601(6), the term "blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), and unemancipated child have no knowledge, and which meets the following requirements:

(1) The trust is under the management and control of a trustee who is a bank or trust company authorized to exercise fiduciary powers, a licensed attorney, a certified public accountant, a broker or an investment advisor, who is:

(i) independent of any interested party;

(ii) is not or has not been an employee of any interested party or any firm in which any interested party has a substantial investment, and is not a partner of, or involved in any joint venture or other investment with any interested party; and

(iii) is not a relative of any party.

(2) The trust instrument provides that:

(i) the trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust tax return shall be prepared by the trustee or his or her designee and such return and any information relating thereto (except as such information may be needed by an interested party in order to complete a personal tax return) shall not be disclosed to any interested party;

(iii) no interested party shall receive any report on the holdings and sources of income of the trust, except periodic reports with respect to the total cash value of the trust or the net income or loss of the trust;

(iv) there shall be no communications, direct or indirect, between the trustee and an interested party with respect to the trust unless such communication is in writing. Except as provided elsewhere in this subdivision, such written communications shall be limited to the general financial interest and needs of the interested party, including requests for distribution of cash or other unspecified assets of the trust;

(v) the interested parties shall make no effort to obtain, and shall take appropriate action to avoid, receiving information with respect to the holdings and the sources of income of the trust including obtaining a copy of any trust tax return file or any information relating thereto except as such information may be needed by an interested party in order to complete a personal tax return.

(3) For purposes of this subdivision, the term "interested party" means a public servant, or the public servant's spouse, domestic partner, as defined in New York City Administrative Code §1-112(21), or unemancipated child.

(b) **Existing trusts.** (1) Any trust existing as of the effective date of these Regulations shall be deemed a blind trust for purposes of these Regulations if the trust instrument is amended to comply with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirements of subdivision (a) of such section, or, in the case of a trust instrument which does not by its terms permit amendment, if the trustee and the trust beneficiary (or, if the trust beneficiary is a dependent child, any other interested party) agree in writing that the trust shall be administered in accordance with the requirements of paragraph 2 of subdivision (a) of this section and the trustee of the trust meets the requirement of paragraph 1 of subdivision (a) of this section.

(c) **Establishment and dissolution of blind trust.** (1) The preparer of a blind trust instrument, or agreement entered into pursuant to subdivision (a) of this section shall, within thirty days of the establishment of such trust or agreement, file an affidavit with the Conflicts of Interest Board stating that the blind trust instrument or trust as agreed to be administered pursuant to agreement, as the case may be, conforms to the requirements set forth in paragraph 2 of subdivision (a) of this section and that the trustee meets the requirements of subdivision (a) of such section.

(2) Within thirty days of the dissolution of blind trust, the beneficiary of such trust or other interested party shall file an affidavit with the Conflicts of Interest Board stating that such blind trust has been dissolved and identifying the date of such dissolution.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par, par (3) amended City Record Dec. 30, 1998 §§2, 3 eff. Jan. 29, 1999. [See T53

§1-01 Note 4]

DERIVATION

Section added City Record Sept. 21, 1990. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 21, 1990:

Pursuant to the authority vested in the Conflicts of Interest Board by §2601(6) of the New York City Charter and in accordance with the requirements of §1043 of the New York City Charter, the Conflicts of Interest Board is authorized to promulgate a rule concerning the definition of a blind trust, for the purpose of ensuring compliance by the City and all public servants with the applicable provisions of the conflicts of interest law. New York City Charter §2604(a)(1)(a) provides that no public servant shall have a position or an ownership interest in a firm which such public servant is engaged in business dealings with the agency served by such public servant. New York City Charter §2604(a)(1)(b) provides that no regular employee of the City shall have a position or an ownership interest in a firm which such regular employee knows is engaged in business dealings with the City. New York City Charter §2604(16) provides that an ownership interest which is held or acquired by a blind trust shall not be included in the definition of ownership interest.

Rules of the City of New York

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

53 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-06 Definition of Primary Employment with the City.

(a) For purposes of Charter §2601(20), "primary employment with the City" means the employment of those public servants who receive compensation from the City and are employed on a full-time basis or the equivalent or who are regularly scheduled to work the equivalent of 20 or more hours per week.

(b) "Primary employment with the City" shall not mean employment of: (i) members of the City Planning Commission, except for the Chair; (ii) interns employed in connection with a program at an educational institution or full-time students; (iii) persons employed for a period not to exceed six consecutive months; or (iv) persons employed on special projects, investigations or programs, in excess of six months but of limited duration, as the Board shall determine.

(c) For purposes of Charter §2601(20), the term "compensation" shall not mean reimbursement for expenses or per diem payments to members of commissions and boards.

HISTORICAL NOTE

Section added City Record Dec. 9, 1991 eff. Jan. 8, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 9, 1991:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §1043 and §2601(20) of the

New York City Charter, the Board is authorized to promulgate a rule establishing when a public servant's primary employment is with the City, for the purpose of Charter §2601(20), which defines the term "regular employee." Comments have been received on the rule published for comment in the City Record on September 17, 1991. Based on such comments, subdivision (b) of proposed §1-06 has been amended to include members of the City Planning Commission, except for the Chair, because pursuant to Charter §192(b), such persons are not considered regular employees of the City for purposes of Chapter 68. The rule herein sets forth such definition.

Rules of the City of New York

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

53 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-07 Definition of Agency Served by a Former Public Servant.

For the purposes of Charter §2604(d)(2), when a former public servant has served more than one agency within one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency.

HISTORICAL NOTE

Section added City Record Nov. 6, 1991 eff. Dec. 6, 1991. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 6, 1991:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §1043 and §2603(a) of the New York City Charter, the Board is authorized to promulgate rules as are necessary to implement and interpret the provisions of Chapter 68.

The purpose of this proposed rule is to ensure compliance by public servants with Charter §2604(d)(2) which provides that no former public servant shall, within one year after termination of such person's service with the City, appear before the city agency served by such public servant.

Rules of the City of New York

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

53 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-08 Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report.

(a) **Bases for obtaining an extension of time to file.** (1) A person required to file a financial disclosure report with the Conflicts of Interest Board (the "Board") pursuant to §12-110 of the Administrative Code of the City of New York (the "Administrative Code") may be granted an extension of time within which to file a report or portion thereof upon a showing of justifiable cause or undue hardship.

(2) A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.

(b) **General procedures.** (1) A request for an extension of time within which to file a financial disclosure report or portions thereof which is due by May first shall be postmarked, or delivery made to the Board, no later than April fifteenth of the year in which such report is to be filed. Where Administrative Code §12-110 requires the filing of such report at a time other than on or before May first, a request for extension of time within which to file shall be postmarked, or delivery made to the Board, no later than fifteen days prior to such filing deadline.

(2) The request for an extension of time shall be mailed to the Board by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.

(3) The request for an extension of time within which to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship shall contain the following information:

(i) The name of the person making such request and his or her home address and work address;

(ii) The title of the position or job classification and name of the agency by which he or she is employed;

(iii) Explanation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents such person wishes the Board to consider;

(iv) Where the filer is seeking an extension to answer a portion of the report on the grounds that certain information is not yet available, the request shall state what information is not available. Documentation, if available, shall be provided in support of such request (for example, a copy of an application to the Internal Revenue Service for an automatic extension of time within which to file one's income tax return); and

(v) The additional time requested and the date by which such person intends to comply with the filing requirements.

(c) **Time limitations upon extensions.** (1) The Board shall not grant an extension of time to file a financial disclosure report or portions thereof due to justifiable cause or undue hardship for a period greater than four months from the original date the report was due.

(2) An individual who is seeking an extension of time to answer a portion of the financial disclosure report shall nevertheless file his or her report on or before May first, or at such other time required by Administrative Code §12-110, containing all the information required by such report, except for that information which is not available. A supplemental statement providing information not previously available shall be filed on the date set by the Board. Failure to file such supplemental statement, or the filing of an incomplete or deficient supplemental statement, shall subject the reporting person to the penalties set forth in Administrative Code §12-110(h).

(d) **Board action.** (1) Upon receipt of a timely request for an extension of time within which to file a financial disclosure report or portions thereof, the Board shall review the material filed to determine whether an extension is appropriate.

(2) The Board may in its discretion request, in writing, additional information from the person making the request. Such additional information shall be submitted to the Board within ten business days of the date of the Board's request. In the event the Board does not receive the additional information within ten business days, it may make a determination on the basis of the information it has available.

(3) The Board shall give written notice of its determination to the person making the request.

(i) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is approved, such report shall be filed on or before the date indicated by the Board in its determination.

(ii) In the event the request for an extension of time within which to file a financial disclosure report or portions thereof is denied, such report shall be filed before or on the due date set forth in Administrative Code §12-110 or such date as may thereafter be established by the Board in its determination.

(4) The Board may delegate to its executive director the authority to act pursuant to this Rule.

HISTORICAL NOTE

Section added City Record Feb. 26, 1992 eff. Mar. 24, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 26, 1992:

Pursuant to Charter §2603(d), the Board administers the City's financial disclosure law, contained in §12-110 of

the Administrative Code. The rule, which is promulgated pursuant to such statutory authority, and in accordance with Charter §1043, sets forth procedures to be followed to obtain an extension of time within which to file a financial disclosure report, pursuant to Charter §2604(d)(3) and §12-110 of the Administrative Code.

Rules of the City of New York

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

53 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-09 Prohibited Appearances Before City Agencies by City Planning Commis- sioners.

(a) **Definitions.**

Appear. "Appear" in accordance with Charter Section 2601(4), means to make any communication, for compensation, other than those involving ministerial matters.

Indirect Appearance. "Indirect Appearance" shall mean a member of the commission will be deemed to "appear indirectly" before a city agency concerning a particular matter if he or she communicates indirectly with such agency, by, for example, having another person, including but not limited to a member of the Commissioner's firm, represent to the agency orally or in writing what the Commissioner's views are on such matter. An indirect appearance will not include, in and of itself and without more, the presentation of project plans or documents bearing the Commissioner's name or seal.

Ministerial. A "ministerial" matter, in accordance with Charter Section 2601(15), shall mean an administrative act, including the issuance of a license, permit or other permission by the city which is carried out in a prescribed manner and which does not involve substantial personal discretion.

(b) **Prohibited Appearances.**

(1) For the purposes of Charter Section 192(b), no member of the City Planning Commission (the Commission) while serving as a member, shall appear directly or indirectly before: the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination; the offices of the Borough Presidents; the City Council; Community

Boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel to which certain determinations of the Landmarks Preservation Commission may be appealed.

(2) For the purposes of Charter Section 192(b), no member of the Commission, while serving as a member, shall appear directly or indirectly:

(i) before the Department of Buildings on any matter involving zoning or land use, provided that a member of the Commission shall not be barred from filing plans with the Department of Buildings or from making appearances related to the filing of such plans, except that appearances in reconsideration proceedings before a Borough Supervisor or the Commissioner of the Department of Buildings shall be prohibited;

(ii) before the Board of Standards and Appeals on any matter involving zoning or land use;

(iii) before the Department of Consumer Affairs with respect to licenses and permits which involve land use;

(iv) before the Department of Business Services (DBS), and any local development corporation that has entered into a contract with the City to perform services on behalf of DBS, on any matter involving zoning or land use;

(v) before any City agency with respect to planning, environmental, financial or other aspects of a project that can reasonably be expected to come before the Commission for a statutory approval or other formal action, including, but not limited to action on major concessions, franchises, the acquisition, use or disposition of City-owned land, an application for a zoning change or special permit, or any action before the Commission pursuant to the Uniform Land Use Review Procedure.

HISTORICAL NOTE

Section added City Record June 18, 1992 eff. July 18, 1992. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 18, 1992:

Pursuant to the authority vested in the Conflicts of Interest Board (the "Board") by §2603(a) and §192(b) of the New York City Charter, the Board is required to determine by rule when an appearance of a member of the City Planning Commission (the "Commission") before a City agency other than the Department of City Planning (the "Department") or the City Planning Commission creates a conflict of interest with the duties and responsibilities of the member.

Charter §192(b) provides that:

"Members [of the City Planning Commission], except for the chair, shall not be considered regular employees of the city for purposes of chapter sixty-eight." The agency served by the members of the commission shall for purposes of chapter sixty-eight be deemed to be both the commission and the department of city planning. No member, while serving as a member, shall appear directly or indirectly before the department, the commission, **or any other city agency for which the conflicts of interest board shall, by rule, determine such appearance creates a conflict of interest with the duties and responsibilities of the member.** No firm in which a member has an interest may appear directly or indirectly before the department or commission. For purposes of this section, the terms "agency," "appear," "firm," and "interest" shall be defined as provided in chapter sixty-eight. (Emphasis added)

For the purposes of the conflicts of interest provisions contained in Chapter 68 of the New York City Charter, members of the City Planning Commission are "public servants," a term which includes all officials, officers and employees of the City. **See** Charter §2601(19). As provided in Charter §192(b), however, they are not "regular

employees," **i.e.,** public servants whose primary employment is with the City, as defined by rule of the Board. **See** Charter §2601(20). The Board's rule defining "primary employment with the City" excludes, among others, members of the City Planning Commission. The following rule delineates the appropriate scope of appearances by members of the Commission before City agencies, **e.g.,** their compensated communications before such agencies involving non-ministerial matters. **See** Charter §2601(4). It is intended to reconcile important, but quite different, policies. First, it is desirable that the Commission be made up of people knowledgeable and experienced in a variety of disciplines and in civic affairs. As a result, more members of the Commission may be involved in ongoing projects which may involve City agencies. **See** Charter Revision Commission**, Minutes of Public Meeting**. August 1, 1989, at 45-46. Second, the protective provisions of Chapter 68 must be enforced to avoid conflicts of interest which might affect a Commissioner's judgment or actions and to avoid situations which might create an appearance of such a conflict. **See** Charter §2604(b)(2), which provides that no public servant shall engage in any transaction which is in conflict with the proper discharge of his or her official duties. **See also** Charter §2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any personal advantage. The Charter Revision Commission headed by Richard Ravitch proposed that members of the Commission could appear before any City agency, except for the Commission itself. This issue was reconsidered by the Charter Revision Commission headed by Frederick A. O. Schwarz Jr., following public hearings at which deep concern was expressed concerning this issue. The Commission then concluded that a stricter rule was appropriate, which should be fashioned by the Board. **See** Charter Revision Commission. An uncompensated communication by a City Planning Commissioner on behalf of a private interest before a City agency would not be an "appearance," as defined in Charter §2601(4), and thus would not be covered by this rule. Under some circumstances, however, such communication could be in violation of Chapter 68. **See i.e.** Charter §2604(b)(2), which provides that no public servant shall have a private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Commissioners are significant members of the City government, who are involved in the capital planning of every city agency and in the policy and programs of many. As a result, many public servants may feel influenced to act favorably upon matters involving a Commissioner even though these matters do not arise out of his or her official duties. This perception may exist whether or not a Commissioner puts improper pressure upon the City employee. **Minutes of Public Meeting,** August 1, 1989, at pages 22-23, 42. The rule set forth below thus seeks to balance the need to attract the best qualified persons to serve on the Commission, including those who have active practices either solo or in large firms, with the need to prevent appearances by Commissioners before City agencies other than the Department and Commission that would either involve real conflicts of interest or have the appearance of involving such conflicts. The rule does not create a blanket prohibition against appearances. Rather, it adopts an agency-by-agency analysis, prohibiting only those appearances before City agencies which have a reasonable likelihood of creating either an actual conflict or the appearance of a conflict.

Rules of the City of New York

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

53 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-10 Retention of Financial Disclosure Reports.

(a) **Definitions.** As used in this Rule, the following terms shall have the respective meanings set forth below:

(1) "Administrative Code" shall mean the Administrative Code of the City of New York.

(2) "Board" shall mean the New York City Conflicts of Interest Board, established pursuant to §2602 of the New York City Charter.

(3) "Financial disclosure report" shall mean any financial disclosure report filed or on file with the Board pursuant to §12-110 of the Aministrative Code, including reports previously filed with the Office of the City Clerk and transferred to the Board's custody.

(4) "Prior disclosure report" shall mean any Financial Disclosure Report which, as of the effective date of this Rule, has been retained by the Board for a period in excess of six years from December 31 of the calendar year to which such report relates.

(b) **Retention of financial disclosure reports.** (1) Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (1), is hereinafter referred to as the "Required Retention Period" for such report.

(2) (i) Except as provided in subparagraphs (ii) and (iii) below, upon expiration of the Required Retention Period for a Financial Disclosure Report, pursuant to paragraph (1) above, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any request that the Board return such report must be made in writing to the Board not later than 10 days prior to the expiration of such period.

(ii) Notwithstanding the provisions of subparagraph (i), if a law enforcement agency requests that the Board retain a Financial Disclosure Report for an additional period of time beyond the expiration of its required retention period, for purposes of an ongoing investigation, the Board shall retain such report for such additional period, provided the request is made in writing and is submitted to the Board not later than 10 days prior to the expiration of such required retention period. Upon expiration of such additional period of time, the Board shall either (i) destroy such report, or (ii) if requested by the individual who filed such report, return such report to such individual. Any such request must be made in accordance with the provision of subparagraph (i) above.

(iii) Notwithstanding the provisions of subparagraph (i), all reports shall be retained by the Board for a period of not less than one year from the date such report was filed with the Board.

(3) In accordance with the provisions of subdivision (e) of Administrative Code §12-110, as amended by Local Law No. 93 of 1992, the retention period established in paragraph (1) is intended to supersede, and shall be observed by the Board in lieu of, the retention periods set forth in such sudivision (e).

(4) Notwithstanding any other provision of this section, the Board shall be entitled, upon the effective date of the Rule, to destroy immediately all Prior Financial Disclosure Reports then in its possession.

HISTORICAL NOTE

Section added City Record July 14, 1994 eff. Aug. 13, 1994. [See Note 2]

Subd. (b) par (2) amended City Record Mar. 28, 2001 eff. Apr. 27, 2001. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 28, 2001:

Section 1-10(b)(1) of Title 53 of the Rules of the City of New York provides:

Whenever a Financial Disclosure Report is filed with the Board, it shall be retained by the Board for a period commencing on the date such report was filed with the Board and expiring on the sixth anniversary of December 31 of the calendar year to which such report relates. The period during which the Board is required to retain a Financial Disclosure Report, pursuant to this paragraph (l), is hereinafter referred to as the "Required Retention Period" for such report.

The amendment addresses the situation where a report is filed less than a year before it is scheduled to be destroyed pursuant to §1-10(b)(1). Although infrequent, such situations have occurred where the public servant's obligation to file, or his or her failure to file, must be litigated. If, for example, a report for calendar year 1994 is not filed until December 20, 2000, the retention rule would require the report to be destroyed less than two weeks after it was filed. Destroying a report almost immediately upon filing makes little sense and undermines the purpose of financial disclosure. The amendment requires that every financial disclosure report be maintained on file by the Board for at least one year.

2. Statement of Basis and Purpose in City Record July 14, 1994: In 1975, the City of New York (the "City") adopted a financial disclosure law, requiring that certain public servants file detailed reports concerning their incomes, investments, outside positions, and other assets and liabilities. The law has been amended several times and is currently

codified at §12-110 of the Administrative Code. Prior to 1990, the financial disclosure law was administered by the City Clerk. Since 1990, it has been administered by the Conflicts of Interest Board (the "Board"). The Board currently collects approximately 12,000 financial disclosure reports each year from the following categories of individuals required to file: (a) holders of Citywide elective offices (Mayor, Comptroller, City Council President, Borough Presidents, and Members of the City Council); (b) holders of political party office, as defined in the law; (c) candidates for Citywide elective office or political party office; (d) agency heads, deputy agency heads, assistant agency heads, members of City boards or commissions (other than members serving without compensation), and City employees who are members of the City's management pay plan or whose salary on April 30 of the year in which a report is to be filed is $42,300 or more; and (e) City employees, whose duties directly involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits. **See** §§12-110(a)(1) through (3) of the Administrative Code. The Board has a total of over 140,000 reports on file including reports collected by the City Clerk during the period 1978 through 1988. Financial disclosure reports are utilized by the Board to detect actual or potential conflicts between a public servant's official duties and his or her private interests or affiliations. In addition, reports are utilized by the City's Department of Investigation to facilitate inquiries into actual or potential cases of fraud, waste and abuse or other wrongful conduct on the part of City officials or employees. Until December 7, 1992, the financial disclosure law required that the Board retain all reports filed with it by public servant until the expiration of two years after that public servant has separated from City service or, in the case of reports filed by any unsuccessful candidate for office, until the expiration of two years from the date of the election at which the candidate was defeated. After the two year period has elapsed the Board is obligated to destroy the reports or, in the alternative, return them to the individual who filed the report. The two-year retention period, tied to separation from City service, has posed both administrative and legal difficulties for the board. In any given year, large numbers of City employees transfer to different agencies or leave City service entirely. The City's records are sometimes outdated or inaccurate and it is often difficult to obtain precise information on the status of a City employee. As a result of these uncertainties the Board for all practical purposes has been forced to retain many reports for an indefinite period of time. This, in turn, has required ever increasing amounts of storage space, filing cabinets, supplies and staff time to insure that all files are properly arranged and maintained. Indeed, because of the number of reports already on hand, the Board has been forced to store a portion of its financial disclosure files off-site, making access and security arrangements far more difficult. In addition, the Board receives approximately 900 requests each year for copies of financial disclosure reports. Such requests are made by the media, law enforcement agencies and members of the public. Because of the uncertainties surrounding the exact date of separation for many former City employees, and the resulting retention of many reports for indefinite periods of time (see above), the Board runs the risk of inadvertently disclosing the contents of a report to a third party, after the date on which the report should have been destroyed. This risk was highlighted in an Article 78 proceeding brought against the Board in the Fall of 1992, in which the Board was informed, long after the fact but just prior to the release of a report, that the individual who filed the report had retired from City service more than two years previously. Effective December 7, 1992, the financial disclosure law was amended to allow the Board, in consultation with the Department of Records and Information Services ("DORIS") and the Department of Investigation ("DOI"), to establish by rule a different period or periods for the retention of financial disclosure reports taking into account the need for efficient records management and the need to retain such reports for a reasonable period for investigatory and other purposes. **See** Local Law No. 93 of 1982, amending §12-110(e) of the Administrative Code. The rule set forth above establishes a uniform retention period for all financial disclosure reports. Each report is to be retained for a fixed period commencing on the date it is filed and expiring on the sixth anniversary of December 31 of the calendar year to which it relates. Since most reports are due on May 1, and cover the preceding calendar year, this rule will insure that the vast majority of reports which are filed with the Board will be retained for at least five full years. This rule was developed in consultation with DORIS, DOI, and the Office of the Corporation Counsel, and seeks to carefully balance the following considerations: (1) the statute of limitations for misconduct in public office (**See** Criminal Procedure Law, §10.10(3)(b)); (2) the need to retain financial disclosure reports for a reasonable period of time, in order to facilitate an inquiry into allegations of conflict of interest or other wrongful conduct; (3) the desire to conform any rule to existing City record retention policies to the extent possible; and (4) the practical benefits of a fixed retention period tied to a date certain, allowing the Board to manage its space requirements more efficiently and avoid the risk of inadvertently disclosing reports that should have been destroyed or returned.

123 of 133 DOCUMENTS

Rules of the City of New York

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

53 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-11 Adjustment of Dollar Amount in Definition of "Ownership Interest".

Effective as of January 1, 2006, the dollar amount in the definition of "Ownership Interest" in subdivision (16) of §2601 of the New York City Charter shall be adjusted from $35,000 to $40,000.

HISTORICAL NOTE

Section amended City Record Mar. 14, 2006 eff. Apr. 13, 2006. [See Note 4]

Section amended City Record Jan. 28, 2003 eff. Feb. 27, 2003. [See Note 1]

Section amended City Record June 11, 1998 eff. July 11, 1998. [See Note 2]

Section added City Record Oct. 28, 1994 eff. Nov. 27, 1994. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 28, 2003:

Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter Sections 2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (emphasis added)

Charter §2603(a) requires the Conflicts of Interest Board, by rule amendment, once every four years to adjust the $25,000 amount established in §2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region as published by the United States Bureau of Labor Statistics. The forgoing provision became effective on January 1, 1990. Pursuant to Charter §2603(a), Board Rule §1-11 was first adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 156.0 in January 1994, or an increase of 15.5%, and to raise the original $25,000 Charter amount in a like percentage to $29,000, rounded to the nearest $1,000. In 1998, Board Rule §1-11 was amended, effective January 1998, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 172.1 in January 1998, reflecting a total of a 27.4% increase in the original $25,000 Charter amount, raising the threshold to $32,000, rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the twelve-year period from January 1990, to January 2002, the Consumer Price Index for the metropolitan area increased from 135.1 to 188.5, reflecting a total increase of 39.5%. Thus, the $25,000 Charter amount should be adjusted to $35,000, reflecting a 39.5% increase in the $25,000 Charter amount, rounded to the nearest $1,000. Pursuant to Charter §1042, this proposed amendment to Board Rule Section 1-11 was published in the Board's Fiscal Year 2003 regulatory agenda.

2. Statement of Basis and Purpose in City Record June 11, 1998: Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §§2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (Emphasis added.)

Charter §2603(a) requires the Conflicts of Interest Board, by amendment, once every four years to adjust the $25,000 dollar amount established in section 2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The foregoing provision became effective on January 1, 1990. The Rule was adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990 to 156.0 in January 1994, or an increase of 15.5%. Thus, the $25,000 dollar amount was adjusted to $29,000, reflecting an increase in the $25,000 dollar amount rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the eight-year period from January 1990 to January 1998, the Consumer Price Index for the metropolitan area increased from 135.1 to 172.1, or 27.4%. Thus, the $25,000 amount should be adjusted to $32,000; reflecting a 27.4% increase in the $25,000 Charter

amount, rounded to the nearest $1,000.

3. Statement of Basis and Purpose in City Record Oct. 28, 1994: Subject to certain exceptions, the conflicts of interest provisions of chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §2604(a) and §2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12).

"Ownership interest" is, in turn, defined in Charter §2601(16) as an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the Board pursuant to subdivision a of section twenty-six hundred three.** (Emphasis added.)

Charter §2603(a) requires the Conflicts of Interest Board, by rule, once every four years to adjust the $25,000 amount established in §2601(14) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The foregoing provision became effective on January 1, 1990. Accordingly, the Board must adopt a rule adjusting the $25,000 amount to reflect changes in the Consumer Price Index. According to the United States Department of Commerce, Bureau of Labor Statistics, for the four year period from January 1990 to January 1994, the Consumer Price Index for the metropolitan area increased from 135.1 to 156.0 or 15.5%. Thus, the $25,000 amount should be adjusted to $29,000, reflecting a 15.5% increase in the $25,000 Charter amount, rounded to the nearest $1,000.

4. Statement of Basis and Purpose in City Record Mar. 14, 2006: Subject to certain exceptions, the conflicts of interest provisions of Chapter 68 of the New York City Charter prohibit New York City public servants from having "interests" in firms engaged in business dealings with the City or from taking actions as a public servant particularly affecting the public servant's interest in a firm. **See** Charter §§2604(a) and 2604(b)(1). An interest may be either an ownership interest in a firm or a position with a firm. **See** Charter §2601(12). "Ownership interest" is, in turn, defined in Charter §2601(16) as

an interest in a firm held by a public servant, or the public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child, or in any blind trust which holds or acquires an ownership interest. **The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.** (emphasis added)

Charter §2603(a) requires the Conflicts of Interest Board, by rule amendment, once every four years to adjust the $25,000 amount established in §2601(16) to reflect changes in the Consumer Price Index for the metropolitan New York-New Jersey region as published by the United States Bureau of Labor Statistics. The forgoing provision became effective on January 1, 1990. Pursuant to Charter §2603(a), Board Rule §1-11 was adopted in 1994 to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 156.0 in January 1994, or an increase of 15.5%, and to raise the original $25,000 Charter amount in a like percentage to $29,000, rounded to the nearest $1,000. In 1998, Board

Rule §1-11 was amended, effective January 1998, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 172.1 in January 1998, reflecting a total of a 27.4% increase from the original $25,000 Charter amount, raising the threshold to $32,000, rounded to the nearest $1,000. In 2002, Board Rule §1-11 was amended, effective January 2002, to reflect the change in the Consumer Price Index from 135.1 in January 1990, to 188.5 in January 2002, reflecting a total of a 39.5% increase from the original $25,000 Charter amount, raising the threshold to $35,000, rounded to the nearest $1,000. According to the United States Department of Commerce, Bureau of Labor Statistics, for the fifteen-year period from January 1990, to October 2005, the Consumer Price Index for the metropolitan area increased from 135.1 to 216.6, reflecting a total increase of 60.3%. Thus, the $25,000 Charter amount should be adjusted to $40,000, reflecting a 60% increase from the $25,000 Charter amount, rounded to the nearest $1,000.

Rules of the City of New York

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

53 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-12 Definition of "Particular Matter" for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller's Office, and Law Department in Relation to Real Estate Tax Assessments.

(a) Pursuant to City Charter §2604(d)(4), no former public servant who has served on or been employed by the Tax Commission, the Department of Finance, the Comptroller's Office, or the Law Department shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in one or more of the activities described in subdivision (b).

(b) Subdivision (a) shall apply with respect to a parcel and tax year about which the former public servant: (1) heard an application for correction of assessment for taxation ("protest") from any real estate tax assessment; or (2) reviewed any proposal to settle or offer to reduce the assessment with respect to any such protest; or (3) participated personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax certiorari proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

HISTORICAL NOTE

Section added City Record June 4, 1997 eff. July 4, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 4, 1997:

Charter §2604(d)(4) permanently bars a former public servant from appearing, whether paid or unpaid, before the City, or from receiving compensation for any services rendered, in relation to any "particular matter" involving the same party or parties with respect to which particular matter the former public servant participated personally and substantially as a public servant through decision, approval, recommendation, investigation, or the like.

This permanent bar as to particular matters has created a quandary for those involved in real property tax assessments. If "particular matter" is defined as the particular parcel, then assessors and tax commissioners, who consider thousands of parcels during their City careers, would, upon leaving City service, find themselves permanently barred from working on any assessments involving those parcels. That result, while a literal reading of the Charter, may appear unduly harsh and, some might argue, may discourage public service in this area.

On the other hand, limiting "particular matter" in this context to the matters pertaining to the assessment of a parcel in a single tax year would permit an assessor or tax commissioner to determine an assessment one day, leave City service the next, and within months represent individuals contesting their assessment for the following tax year and, in that regard, rely upon evidence and knowledge gained in City service about that very piece of property a few months earlier. Although each tax year may be separate and distinct for tax purposes (**see People ex rel. Hilton v. Fahrenkopf,** 279 N.Y. 49 (1938)), that tax concept would seem to bear little relation to the purposes of the City conflicts of interest law, which is designed to protect integrity in City government. Furthermore, although under **Hilton** a determination in one tax year does not bind assessors in subsequent tax years, as a practical matter evidence found and determinations made in one tax year will tend to be replicated in the next tax year. The danger, or at least the perceived danger, that confidential information may be used by a former assessor or tax commissioner to promote the interests of his or her private clients over the interests of the City compounds these problems. Thus, interpreting the term "particular matter" to mean assessment-related activity for a parcel in a single tax year would appear ill-advised.

The new rule permits the former public servant to work on an assessment involving a parcel of property he or she worked on while a public servant, provided that (1) the former public servant does not appear before his or her former agency within one year after leaving City service (existing provisions of Charter §2604(d)(2)); (2) the former public servant does not disclose or use any confidential City information (existing provisions of Charter §2604(d)(5)); and (3) the former public servant does not work on matters pertaining to an assessment for the tax year he or she had worked on such assessment or for the subsequent tax year. The following example will help illustrate how the rule will work.

Example. In April 1996 a tax commissioner hears a protest from an assessment involving a parcel of property for tax year 1996-1997. During the fall of 1996, the tax commissioner is involved in a tax certiorari proceeding relating to that same piece of property for the tax year 1990-1991. The matter is before the Tax Commission for the year 1990-1991. The tax commissioner leaves City service on March 1, 1997. Under Charter §2604(d)(2), the tax commissioner could not appear before the Tax Commission on non-ministerial matters until March 1, 1998. In addition, he or she may not appear before the City, or work for compensation, in connection with the assessments for that parcel of property for the tax years 1990-1991, 1991-1992, 1996-1997, or 1997-1998.

Two final points with respect to the new rule should be noted. First, although primarily aimed at assessors and tax commissioners, the rule is not limited to those public servants but, rather, regulates any public servant in the Office of the Tax Commission, Comptroller's Office, Department of Finance, or Law Department who engages in the conduct specified in the rule. Secondly, the rule does not expressly require that a public servant (e.g., a tax commissioner) hearing a protest from an assessment or reviewing a proposal to settle such a protest be personally and substantially involved in those activities. The Conflicts Board has determined that any public servant who hears such a protest or reviews such a proposal is, of necessity, personally and substantially involved in those matters. If in a particular case a public servant believes that his or her involvement was not personal and substantial, he or she may seek a ruling to that effect from the Board.

The Board conducted a public hearing on February 18, 1997, during which time it received testimony from the president of the City union representing assessors, appraisers, and mortgage analysts (Local 1757 of District Council 37). The union is generally supportive of the rule proposed by the Board but suggested that with respect to tax certiorari proceedings the two-year proscription on appearing before the City be enlarged to a three-year ban. The Board has considered this and other comments and suggestions submitted by the local and has concluded that the uniform two-year ban applicable to all tax proceedings should be retained.

Rules of the City of New York

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

53 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-13 Conduct Prohibited by City Charter §2604(b)(2).

(a) Except as provided in subdivision 3 of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

(b) Except as provided in subdivision 3 of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

(c) (1) A public servant may pursue a personal and private activity during normal business hours and may use City equipment, resources, personnel, and supplies, but not City letterhead, if, (i) the type of activity has been previously approved for employees of the public servant's agency by the Conflicts of Interest Board, upon application by the agency head and upon a determination by the Board that the activity furthers the purposes and interests of the City; and (ii) the public servant shall have received approval to pursue such activity from the head of his or her agency.

(2) In any instance where a particular activity may potentially directly affect another City agency, the employee must obtain approval from his or her agency head to participate in such particular activity. The agency head shall provide written notice to the head of the potentially affected agency at least 10 days prior to approving such activity.

(d) It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly:

(1) solicit, request, command, importune, aid, induce or cause another public servant to engage in conduct that violates any provision of City Charter§2604; or

(2) agree with one or more persons to engage in or cause the performance of conduct that violates any provision of City Charter §2604.

(e) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a) through (d) of this section violates City Charter §2604(b)(2), although the Board may impose a fine for a violation of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a), (b), or (c) of this section.

HISTORICAL NOTE

Section added City Record July 9, 1998 eff. Aug. 8, 1998, internal subdivisions and paragraphsp

redesignated by the Law Department per Charter §1045(b). [See Note 1]

Subd. (d) amended City Record Jan. 9, 2007 §1, eff. Feb. 8, 2007. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 9, 1998:

New York City Charter §2604(b)(2) provides:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

The Charter Revision Commission

retained this "catch-all" prohibition in recognition of the fact that the specific prohibitions set forth in the [Charter] chapter [68] cannot address all conflict of interest situations which may arise in the future and that the [Conflicts of Interest] board must retain the flexibility to handle new situations as they arise. However, fairness to public servants dictates that no punishment be imposed for actions not previously identified as prohibited. Volume II, **Report of the New York City Charter Revision Commission, December 1986-November 1988,** at p. 175.

Accordingly, Charter §2606(d) precludes the Conflicts of Interest Board (the "Board") from imposing penalties for a violation of Charter §2604(b)(2), "unless such violation involved conduct identified by rule of the board as prohibited by such paragraph." The purpose of the rule is to identify certain such conduct. As experience reveals additional conduct, the Board may amend the rule to add it. Since its establishment the Board has received hundreds of requests from public servants for advice as to whether the public servant may engage in various outside activities, such as volunteering for a non-profit organization or working for a private business. Often the Board finds that Chapter 68 permits the particular activity, provided that the public servant abides by certain restrictions. In that regard, the Board cites, among other provisions, Charter §2604(b)(2), cautioning the public servant that he or she must pursue the activity at times when he or she is not required to perform services for the City. So, too, in the enforcement context, the Board has observed on a number of occasions that a public servant has violated Charter §2604(b)(2) by performing an outside activity, particularly a compensated outside activity, on City time. The Board has also noted that from time to time public servants have, in violation of Charter §2604(b)(2), encouraged or caused another public servant to violate the provisions of Charter §2604 by, for example, inducing that second public servant to obtain from the City a financial benefit for a son or daughter, in violation of Charter §2604(b)(3). In addition, the Board has received complaints about City employees using City personnel, equipment, letterhead, resources, or supplies for non-City purposes. If such a use is to obtain a private or personal advantage for the employee, for a member of his or her immediate family, for a person with whom the employee has a business or other financial relationship, or for a firm with which the employee has a

present or potential position or ownership interest, then the use might be a violation of Charter §2604(b)(3). However, (b)(3) might not apply, for example, where a City employee writes a letter on City letterhead endorsing a political candidate or uses a City photocopier to make photocopies for a volunteer organization. Adoption of the rule will permit the Board to impose penalties for such violations of Charter §2604(b)(2), either alone or in combination with the imposition of penalties for violation of other provisions of Chapter 68. It is important to note, however, that certain public service activities, such as volunteering one's services for a professional organization, may in some instances further the City's interests. For example, a public servant's uncompensated participation on a bar association committee not only may help the public servant meet his or her obligations to the profession but also may reflect favorably upon the City and the public servant's agency, may assist in the professional development of the public servant, and may provide him or her with new insights into the performance of his or her City job, all to the City's benefit. For this reason, the rule, in subdivision (3), permits an agency head to apply to the Conflicts Board for permission for the employees of the agency to engage in such activities during normal working hours and to use City equipment, resources, personnel, and supplies-but not City letterhead-in connection with the activity. Thus, for example, the Corporation Counsel could seek approval of the Board for attorneys in the Law Department to attend bar association committee meetings during the day and even to type and photocopy a bar association report on City computers and photocopiers-but not to use Law Department letterhead. If, however, the work of the bar association committee has a direct impact upon another City agency, then the Corporation Counsel would have to give the head of that other agency at least 10 days written notice before approving the employee's request. Furthermore, once a type of activity has been approved by the Board for the employees of a particular agency under this provision, other employees of that agency who wish to engage in the same type of activity need obtain approval only from their agency head; additional approval from the Board is not required. Three additional points should be noted. First, as with any ethics law, the rule must be interpreted in light of reason, experience, and common sense. A brief telephone call to a friend or doctor would not constitute a violation of the rule. Running an outside business from one's City office would, as would spending an afternoon at the beach during City time. Second, as stated in subdivision (4) of the rule, conduct other than that identified in the rule may constitute a violation of Charter §2604(b)(2), although, under Charter §2606(d), the Board may not impose any penalties for such other conduct, unless it violates some other provision of Charter §2604. As noted by the Charter Revision Commission, "the board may in some situations adjudicate a public servant to be in violation of paragraph two [of section 2604(b)] without imposing any penalties." Volume II, **Report of the New York City Charter Revision Commission, December 1986-November 1988,** at pp. 175-176. The Board may in the future amend the rule to identify other conduct prohibited by section 2604(b)(2). Third, where a charitable or philanthropic activity, such as the annual toy collection drive or the Combined Municipal Campaign, is sanctioned by the Mayor as a City activity, neither Charter §2604(b)(2) nor this rule comes into play. Accordingly, City employees may use City time, letterhead, and resources in connection with that activity. In response to the public hearing notice on the proposed rule, the Board received detailed and persuasive comments from the City Council and the Comptroller's Office. In response to those comments, the Board changed the rule in several respects: to delete the requirement that a public servant may engage in an activity permitted under subdivision 3 only at times when the public servant is not required to perform services for the City; to remove the prohibition on using City personnel for an activity permitted under subdivision 3; to require that such an activity further the purposes and interests of the City (the same standard as that set forth in Charter §2604(c)(6)(b)); to replace with a notice requirement the requirement that permission for such an activity be obtained from every affected City agency; to add a mental state ("intentionally and knowingly") to subdivision 4; and to make certain technical changes in the rule.

2. Statement of Basis and Purpose in City Record Jan. 9, 2007: New York City Charter §2604(b)(2) provides:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Rule 1-13(d) currently provides: It shall be a violation of City Charter §2604(b)(2) for any public servant to intentionally or knowingly **induce or cause** another public servant to engage in conduct that violates any provision of City Charter §2604 (emphasis added).

The language "induce or cause" has proven to be too narrow in scope and does not capture all of the conduct that

could be subject to accessorial liability under the Penal Law. Accordingly, the amendment would modify the language of the rule to be parallel with that in §20.20 of the Penal Law, as specified in the proposed paragraph (1) above. In addition, the current rule does not provide for liability for those persons who engaged in a conspiracy with others to violate the conflicts of interest law. The proposed paragraph (2) would adopt the Penal Law definition of conspiracy in the sixth degree found in Penal Law §105.00 to specify additional conduct that would form the basis for liability for the acts of another under this provision.

A public hearing on these rules was held on November 28, 2006, pursuant to notice published in the **City Record** on October 19, 2006, and no one attended to provide testimony or comment, nor were comments received prior thereto.

CASE NOTES

¶ 1. Subsection (a) of this section prohibits the use of City resources for personal purposes when the use occurs during a time when the employee is required to perform City services. Subsection (b) prohibits the use of City resources for personal purposes regardless of whether the use occurs when the employee is on or off-duty. Therefore, employee's use of City van for personal purposes violated section (b), regardless of whether the use occurred on or off-duty; his personal use of the van violated subsection (a) only when the use occurred during work time-not when he used it on a vacation day. **Conflicts of Interest Bd. v. Allen**, Conflicts of Interest Bd. Case No. 06-411 (Sept. 11, 2007), **adopting**, OATH Index No. 1791/07 (June 12, 2007).

¶ 2. An assistant principal of a New York City public school violated 2604(b)(2) and (b)(3) of the New York City Charter when she failed to deposit $8,500 into a school account and instead used the funds from the account for her personal benefit and other non-city purposes, including purchasing intimate apparel and a handbag, and to pay a teacher's parking ticket. The ALJ rejected the assistant principal's unverified defense that she was only reimbursing herself for school related purchases as implausible. Further, even if she had been reimbursing herself, she failed to follow agency procedures and gave priority to her claims over those of vendors or other teachers, thereby using her position as custodian of the student fund for personal advantage. $7,500 fine recommended. **Conflicts of Interest Bd. v. Bryan**, OATH Index No. 1366/08 (Aug. 14, 2008), **adopted**, Chair's Dec. (Nov. 18, 2008).

¶ 3. In Molinari v. Bloomberg, 564 F.3d 587 (2d Cir. 2009), a group of elected officials and private citizens, including the current Comptroller, Public Advocate of NYC and several current members of the City Counsel, challenged the enactment of Local Law 51. The defendants included the leaders of the City Council, who pushed for the enactment of the law, and the Mayor, who signed it. The challenged law modified the two-term limit for certain public offices; it increased the limit to three terms for Mayor, Council Member, Public Advocate, Comptroller and Borough President. What the new law did was to change term limits by legislative enactment even though the term limits had originally been enacted in 1993 by City-wide referendum.

Plaintiffs claimed the following:

1) Defendants violated their First Amendment rights because the City voters will be less likely to engage in First Amendment speech if laws enacted by referenda can be amended by City Council legislation;

2) Defendants violated their substantive due process guaranteed by the Fourteenth Amendment of the U.S. Constitution because the sole purpose of Local Law 51 is to extend defendants own political careers by entrenching incumbents;

3) Defendants violated NY Municipal Home Rule Law Sec. 23(2)(b), which they contend requires a referendum to enact the provisions of Local Law 51;

4) Defendants violated the City Charter's conflict of interest provisions by enacting legislation conferring upon themselves a political benefit.

In upholding the law, the court rejected all four of the above arguments. At the outset, the court pointed out that the City Council and Mayor are given broad power to enact local laws, including amendments to the City Charter, so long as they relate to property, affairs or government and are not inconsistent with the New York State Constitution or general laws. See NY Mun. Home Rule Law Sec. 10(l)(i)-(ii). Sections 36 and 37 of the NY Municipal Home Rule Law allows voters to enact such laws directly by means of referendum. This can be directly initiated by voters through a voter initiative process. See Sec. 37. If voters who are qualified file with the City Clerk a petition containing a certain number of signatures requesting that a proposed local law amending the City Charter be put to referendum, the proposed local law will appear on the ballot at the next general election. A referendum proposing a local law amending the City Charter may also be initiated by a Charter Commission. See Section 36. Thus, a charter commission can be created either by a voter's petition, the City Council or the Mayor.This happened in 1993 where the City voters put a referendum on the ballot by voter initiative proposing term limits for certain elected officials. This was ultimately adopted by a vote of more than 59%.

Before the enactment of Local Law 51, City Charter 1137 stated that a mayor was limited to eight consecutive years (also includes public advocate, comptroller, borough president and council members so that elected representatives represent the citizens and can therefore be responsive to the needs of the people and are not career politicians. Moreover, before Local Law 51, Section 1138 stated that no person shall be eligible to be elected to or serve in the offices referenced above except if one full four year term has elapsed after the person has held office.

In October 2008, the Mayor announced that he was going to work with the Speaker of the City Counsel to introduce legislation to extend the City's term limits because it was his belief that experienced leadership in a time of deep financial crisis was needed. Bill 845-A was introduced and if signed into law, would amend the above sections of the City Charter to change the term limits for no more than two consecutive terms to no more than three consecutive terms. Plaintiffs claimed that the Mayor planned to initiate this change as early as 2007, but delayed this announcement so that voters could not put the issue of term limits on the ballot through a voter initiative prior to the November 2009 election. Under Sec. 37 of the NY Municipal Home Rule Law, if qualified voters were to have filed a petition following the introduction of the bill in October 2008 putting the term limits issue to a referendum, it would appear on the November 2009 election ballot at the earliest. See Municipal Home Rule Law Sec. 37(6)-(7). The bill was signed into law on Nov. 3, 2008 and is known as Local Law 51. The plaintiffs commenced suit a week later.

The court addressed each of plaintiffs arguments.

Argument #1-First Amendment. Court agreed with defendants and agreed with Appellee's that Local Law 51 does not implicate plaintiffs' First Amendment rights. The First Amendment was created for the exchange of ideas leading to political and social change, as desired by the people. Here, plaintiffs have not been restricted from engaging in First Amendment activity. Plaintiffs were free to exercise their First Amendment rights in connection with the prior referendums (1993 and 1996). Plaintiffs simply claim that their First Amendment rights have been violated by Local Law 51 because voters will be less likely in the future to engage in the referendum process if a law enacted by that process can be amended or repealed through City Council legislation. As noted in other circuit courts, plaintiff's First Amendment rights are not implicated by referendum schemes in and of themselves, but by the regulation of advocacy with this process (i.e. Petition circulating, discourse and other protected forms of advocacy). What is important is that the communication of ideas associated with the referendum process is not affected, even if plaintiffs are correct in their assumption that it will be more difficult for plaintiffs to organize voter initiatives and referenda in the future. The fact that a process may be difficult is insufficient to implicate the First Amendment, the court held.

Argument #2-Substantive Due Process. The appellants believe that the purpose of Local Law 51 was an "incumbency re-employment program" to allow "those in power to have the opportunity to remain in power." Appellants do not point to a fundamental right nor a suspect classification in connection with this legislation, and there is a rational relationship between the legislation and its purpose. The City's reason for enacting the law is to provide voters with an opportunity to elect experienced public officials in a time of financial crisis, which is rationally related to a legitimate objective. The fact that a politician wishes to remain in office is not consequential. Therefore, the

legislation stands. There is nothing unconstitutional per se about incumbents shaping the electoral process to their advantage, and is an aspect of the American political scene.

Argument #3-NYS Referendum Law. Plaintiffs argued before the District court that under Municipal Home Rule Law §23(2)(b)(e)(f), the substance of Local Law 51 could be enacted only by referendum. On appeal, the appellants have abandoned their arguments under (e) and (f), as well as NYC Charter §38. They argue here that Local Law 51 changes the membership of the legislative body pursuant to §23(2)(b). Section 10 of the Municipal Home Rule Law provides that city governments have the power to adopt and amend local laws relating to the powers, duties, qualifications, terms of office, compensation, welfare and safety of its officers and employees, among other considerations. Mun. Home Rule Law §10(l)(a)(l). Plaintiffs argued that Local Law 51 changes the composition of the City Council because it will result in re-electing incumbents who were not previously eligible to seek re-election under the previous term limit law. There is no case law interpreting §23(2)(b) although there is case law interpreting its predecessor, City Home Rule Law Sec. 15(l), which states that an act of the legislature is subject to a mandatory referendum except as otherwise noted or under authority. In any event, the NYS legislature did not intend to make a substantive change in the meaning of the provision, but wanted to establish uniformity among various governmental bodies. It was not intended to abolish or curtail any rights, privileges or powers. NY Municipal Home Rule Law Sec. 50(3). While Local Law 51 now uses the word "membership" where section 15(l) used the word "form" the law remains unchanged with respect to the types of local laws subject to referenda, and the restrictions and prohibitions have not changed. While the law can change the composition of a legislative body, this does not mean that it can change the form or composition of that body. Membership, as used in the revised Municipal Home Rule Law, §23(2)(b) refers to the structural characteristics of the legislative body. Local law affects only an incumbent's eligibility for re-election and does not alter the number of seats in the legislative body. Local Law 51 does not trigger Municipal Home Rule Law Sec. 23(2)(b) because it does not directly change the membership. (City Charter 22 provides that the size of the council may be increased by local law without approval by the voters in a referendum.)

Argument #4-Conflict of Interest. Plaintiffs allege that defendants violated conflict of interest provisions under Chapter 68 of the City Charter Sec. 2604(b)(2)(3) and Conflicts Board Rule 1-13(d) (Rule 1-13(d). Under Sec. 2604(b)(2)-no public servant shall engage in any business, transaction, private employment, or have a financial or private interest, whether direct or indirect, which conflicts with his or her official duties. Under Sec. 2604(b)(3)-No public servant shall use or attempt to use his or her position as a public servant to obtain financial gain, contract, license, privilege, either directly or indirectly, from a person or firm associated with the public servant. Prior to voting on Local Law 51, an advisory opinion was sought from the Conflict of Interest Board, who concluded that it is within the proper discharge of Council Members' official duties as legislators for them to vote upon and participate in the legislative process in connection with a bill that is lawfully pending before the council. While term limited elected officials may have a personal political interest in what happens, that interest does not fall under Chapter 68, and would not be disqualified from participating in the enactment of this legislation. Agreeing with the District Court, the Appeals Court gives considerable deference and validity to these advisory opinions, absent a clear showing to the contrary. There is no personal or private interest shown.

126 of 133 DOCUMENTS

Rules of the City of New York

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

53 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-14 City Employees Holding Policymaking Positions for Purposes of the Financial Disclosure Law.

For purposes of Administrative Code §12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a financial disclosure report, if such employee is charged with substantial policy discretion within the meaning of §1-02 of Title 53 of the Rules of the City of New York.

HISTORICAL NOTE

Section added City Record Dec. 23, 2003 eff. Jan. 22, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 23, 2003:

Local Law 43 of 2003 amended the City's Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a "policymaking position . . ., as defined by rule of the conflicts of interest board. . . ." Ad. Code §12-110(b)(3)(a)(3). In analogous provisions, the City's Conflicts of Interest Law (City Charter Chapter 68, §2600 **et seq.**) imposes restrictions on the political activity of certain public servants "charged with substantial policy discretion as defined by rule of the board. . . ." Charter §2604(b)(12) (prohibiting certain political fundraising by appointed public servants with substantial policy discretion) and §2604(b)(15) (prohibiting public servants with substantial policy discretion from holding certain political party offices). "Substantial policy discretion" is defined in Board Rules §1-02. Both the Financial Disclosure Law and the Conflicts of Interest Law thus impose certain additional responsibilities on City policymakers. No principled reason

exists for defining policymaker differently in these two laws. Furthermore, linking the policymaking position rule and the substantial policy discretion rule would ensure that all public servants with substantial policy discretion file financial disclosure reports. Such a linkage also provides a simple definition and avoids a multiplicity of rules, one for substantial policy discretion and one for policymaking position. In addition, adopting a single rule for both laws will reduce, by 50%, the burden on City agencies in identifying their employees who fall within the rules. Finally, the Board has had in place for some time a system for determining which public servants exercise substantial policy discretion, and that system has worked well.

Indeed, many ethics laws link financial disclosure filing status and restrictions on high-level public servants. For example, the New York State Ethics Commission, by rule, prohibits State officers and employees who hold "policymaking positions" from moonlighting without the approval of the Commission and ties the definition of "policymaking position" for that purpose to the definition of "policymaking position" in the State financial disclosure law. **See** 9 NYCRR §932.1(e) (defining "policymaking position" by cross-reference to the State financial disclosure law, NYC Pub. Off. Law §§73-a(1)(c)(ii) and 73-a(1)(c)(iii)) and §932.3(c) (imposing a moonlighting restriction on individuals serving in policymaking positions).

Similarly, Westchester County's Code of Ethics imposes post-employment restrictions on "reporting officers or employees," defined as those full-time County officers and employees required to file a financial disclosure statement. **See** Laws of Westchester County §§883.11(1), 883.21(h), 883.21(i)(3), 883.61.

It should be noted that this policymaker category of financial disclosure filers applies only to employees, not to officers, and thus not to members of boards and commissions. Such members must file financial disclosure reports under Ad. Code §12-110(b)(3)(a)(1), but only if they are entitled to compensation. If they serve without compensation, they do not file financial disclosure reports despite the fact that they exercise substantial policy discretion, as defined in 53 RCNY §1-02(a).

Rules of the City of New York

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

53 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-15 City Employees Whose Duties Involve the Negotiation, Authorization, or Approval of Contracts and of Certain Other Matters.

(a) For purposes of Administrative Code §12-110(b)(3)(a)(4), a City employee shall be deemed to have duties that involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits if the employee performs any of the following duties:

(1) Determines the substantive content of a request for proposals or other bid request or change order;

(2) Makes a determination as to the responsiveness of a bid or the responsibility of a vendor or bidder;

(3) Evaluates a bid;

(4) Negotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order;

(5) Recommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted;

(6) Approves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110; or

(7) Determines the content of or promulgates City procurement policies, rules, or regulations.

(b) Clerical personnel and other public servants who, in relation to the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances, and special permits, perform only ministerial tasks shall not be required to file a financial disclosure report pursuant to Administrative Code §12-110(b)(3)(a)(4). For example, public servants who are under the supervision of others and are without substantial personal discretion, and who perform only clerical tasks (such as typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors) shall not, on the basis of such tasks alone, be required to file a financial disclosure report. Similarly, public servants who write a request for proposals, bid request, change order, contract, lease, franchise, revocable consent, concession or application for a zoning change, variance, or special permit or procurement policy, rule, or regulation under the direction of a superior but who do not determine the substantive content of the document shall not, on the basis of such tasks alone, be required to file a financial disclosure report.

HISTORICAL NOTE

Section added City Record Jan. 30, 2004 eff. Feb. 29, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2004:

Statutory Authority:

Sections 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(4) of the New York City Administrative Code.

Statement of Basis of Purpose of the Rule:

As mandated by New York State law, the City's Financial Disclosure Law requires the filing of an annual financial disclosure report by, among others,

Each city employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head, subject to review by the conflicts of interest board.

Ad. Code §12-110(b)(3)(a)(4), as amended by Local Law 43 of 2003, effective January 1, 2004. **See also** NYS Gen. Mun. Law §§811(1)(a), 813(9)(k). The Board must, therefore, adopt a rule defining these so-called "contract" filers. The Board must also adopt a separate rule regulating appeals by public servants who contest their designation as "contract" filers. **See** Ad. Code §12-110(c)(2), as amended by Local Law 43 of 2003. Historically, determination of such appeals by unionized employees has consumed considerable time of the filer's agency, which makes the initial determination as to whether the agency correctly identified the public servant as a "contract" filer and provides documentation in support of that initial determination; the filer's union, which prosecutes the appeal; the Office of Labor Relations, which currently defends the appeal; the Office of Collective Bargaining, which currently hears the appeal and makes a recommendation; the Department of Investigation, which currently makes the final determination of the public servant's filing status; and the Board, which currently provides technical and legal support throughout the appeal process. As of January 1, 2004, appeals will be determined by the Board. **See** Ad. Code §12-110(c)(2), as amended by Local Law 43 of 2003. Moreover, in the Board's experience, agencies differ widely in their interpretation of what constitutes the "negotiation, authorization or approval of contracts." Some agencies include everyone involved in purchasing, even clerical help; other agencies include only procurement officers. Little uniformity exists among agencies in interpreting this provision of law. As the Board has often stated, the purpose of the City's ethics laws, including its Financial Disclosure Law, lies in promoting both the reality and the perception of integrity in City

goverment by preventing conflicts of interest before they occur. The focus, therefore, lies on prevention, not punishment. Thus, financial disclosure focuses the official's attention at least once each year upon the Conflicts of Interest Law; alerts the public, the media, supervisors, vendors, and the filer to his or her possible conflicts of interest, thereby helping to avoid them; and provides a check on transactional disclosure and recusal by a public servant when a potential conflict actually arises. In light of the foregoing, the Board's intent in drafting the rule is threefold: (1) to limit financial disclosure filing to those public servants who are at risk of conflicts of interest; (2) to ensure that rules for determining who is a "contract" filer are uniform and uniformly applied throughout the City; and (3) to reduce the number of appeals by defining with some precision who should and should not be filing a financial disclosure report because of "contracting" duties.

Rules of the City of New York

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

53 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 1 CONFLICTS OF INTEREST

§1-16 Prohibited Gifts from Lobbyists and Exceptions Thereto.

(a) Pursuant to Administrative Code §3-225, no person required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code shall offer or give a gift to any public servant.

(b) For purposes of this section:

(1) the persons required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code include (i) the lobbyist, (ii) the spouse or domestic partner of the lobbyist, (iii) the unemancipated children of the lobbyist, and (iv) if the lobbyist is an organization, the officers or employees of such lobbyist who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees;

(2) the term "lobbyist" shall have the same meaning as used in §3-211 of the Administrative Code;

(3) the term "offer" shall include every (i) attempt or offer to give a gift, or (ii) attempt or offer to arrange for the making of a gift;

(4) the term "give" shall include every (i) tender of a gift, or (ii) action as an agent in the making of a gift, or (iii) arrangement for the making of a gift;

(5) the term "gift" shall include any gift which has any value whatsoever, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

(c) For purposes of Administrative Code §3-225 and this section, the following gifts shall not be prohibited:

(1) de minimis promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(2) gifts that are customary on family or social occasions from a family member or close personal friend, when it can be shown under all relevant circumstances that it is the family or personal relationship rather than the lobbying activity that is the controlling factor and the public servant's receipt of the gift would not result in or create the appearance of:

(i) using his or her office for private gain;

(ii) giving preferential treatment to any person or entity;

(iii) losing independence or impartiality; or

(iv) accepting gifts or favors for performing official duties;

(3) awards, plaques, and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value; (4) free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:

(i) when offered during a meeting which the public servant is attending for official reasons;

(ii) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;

(iii) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and refusal to participate and/or individual payment would be impractical;

(iv) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical; or,

(v) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City;

(5) meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;

(6) invitation to attendance at professional or educational programs as a guest of the sponsoring organization;

(7) invitation to attendance at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;

(8) invitation to attendance at a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(9) invitation to attendance by a public servant who is an elected official, a member of the elected official's staff authorized by the elected official, or a member of the central staff for the council authorized by the speaker of the council at a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization;

(10) travel-related expenses from a private entity which is offered or given as a gift to the City rather than to the public servant, so long as: (i) the trip is for a City purpose and therefore could properly be paid for with City funds; (ii) the travel arrangements are appropriate for that purpose; and (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose;

(d) Nothing in this section shall be deemed to authorize a person required to be listed on a statement of registration pursuant to §3-213(c)(1) of the Administrative Code to offer or give a gift to any public servant in violation of any other applicable federal, state or local law, rule or regulation, including but not limited to the New York State Lobbying Act.

HISTORICAL NOTE

Section added City Record Dec. 27, 2006 §2, eff. Jan. 26, 2007. [See T53 §1-01 Note 6]

Rules of the City of New York

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

53 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-01 Initial Determination.

(a) **Notice.** If the Board makes an initial determination, based on a complaint, investigation, or other information available to the Board, that there is probable cause to believe that a public servant (which for purposes of Charter §2603(h) includes a former1 public servant) has violated a provision of Chapter 68 of the City Charter, the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The notice shall afford the public servant an opportunity, either orally or in writing, to respond to, explain, rebut, or provide information concerning the allegations in such notice within fifteen days of service of the notice. The notice shall also inform the public servant of his or her right to be represented by counsel or any other person, and shall include a copy of the Board's procedural rules. A notice of initial determination shall not be required in a proceeding brought pursuant to §12-110 of the Administrative Code.

(b) **Request for a Stay.** In response to the Board's notice, the public servant may apply to the Board for a stay of the proceedings, for good cause shown. The Board may grant or deny such request in its sole discretion.

(c) **Admission of Facts.** If, in response to the Board's notice, the public servant admits to the facts contained therein or to a violation of the provisions of Chapter 68 of the City Charter and elects to forgo a hearing, the Board may, after consulting with the head of the agency served or formerly served by the public servant, or, in the case of an agency head, after consulting with the Mayor, issue an order finding a violation and imposing the penalties it deems appropriate under Chapter 68 of the City Charter, provided, however, that pursuant to Charter §2603(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may recommend to the City Council such penalties as the Board deems appropriate. When a

penalty is recommended, the City Council shall report to the Board what action was taken.

(d) **No Probable Cause Finding.** If, after receipt of the public servant's response, the Board determines that there is no probable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant in writing of its decision.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A non-incumbent candidate for City Council is not a "public servant," and therefore service of adjudication notices on the candidate is governed not by this section but by OATH's rule, 48 RCNY §1-23(b). Conflicts of Interest Board v. Two City Council Candidates, OATH Index Nos. 902-03/93 (July 7, 1993).

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record Aug. 5, 1991 eff. Sept. 4, 1991. Note Statement of Basis and Purpose: Pursuant to the authority vested in the Conflicts of Interest Board (the Board) by §2603(h) of the New York City Charter, the Board is authorized to promulgate procedural rules for conducting adjudicatory hearings. Such hearings are to be held following the Board's determination that there is probable cause to believe that a public servant has violated a provision of the Conflicts of Interest Law (City Charter Chapter 68) or the financial disclosure law (Administrative Code §12-110). The rules proposed herein provide that the hearings shall be conducted by the Board or by the Office of Administrative Trials and Hearings, designated by the Board.

Chapter 2 amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. Note further provisions:

Although the Conflicts of Interest Board's (the "Board's") procedural rules for hearings have worked well since their adoption in 1991, several problems have arisen with respect to those rules that need to be addressed, particularly in view of the Board's substantially increased enforcement efforts. The amendments address those problems.

The hearing process may be divided into four stages:

(1) The Board's initial determination of probable cause to believe that the respondent has violated the conflicts of interest law (Chapter 68 of the New York City Charter) or the financial disclosure law (Section 12-110 of the Administrative Code) and the respondent's response;

(2) Service of a petition, which commences the formal proceedings, and the respondent's answer;

(3) The hearing; and

(4) The decision and order of the Board.

The first four sections of the Board's hearing rules address each of these stages. The fifth section of the Board's hearing rules currently addresses only confidentiality but is amended to regulate miscellaneous matters

that are relevant throughout the hearing process, such as service of papers.

The amendments effect eight primary changes in the Board's hearing rules:

(1) Elimination of probable cause notices in financial disclosure litigation;

(2) Elimination of the requirement for certified mail service, except for petitions (the jurisdiction-obtaining document that commences an enforcement proceeding) when they are served by first class mail, and expansion of the methods for serving Board documents to allow all methods of service permitted by the CPLR;

(3) Clarification of which rules apply to hearings before OATH and which apply to hearings before the Board or before a Board member;

(4) Clarification of the requirement that only the hearing officer may issue subpoenas in Chapter 68 or Section 12-110 hearings;

(5) Clarification of the procedures for disposing of a case by agreement;

(6) Authorization of ex parte communications between the enforcement attorney and the Board in certain circumstances;

(7) Reorganization of the rules; and

(8) Certain technical amendments, such as measuring deadlines from time of service instead of from time of receipt.

Each of these changes is discussed below.

Probable cause notices. Through complaints, through referrals from the Department of Investigation and other City agencies, and through the Board's own initiatives, the Board becomes aware of conduct that might violate Chapter 68. If upon examining that conduct the Board makes an initial determination that there is probable cause to believe that the public servant has violated a provision of Chapter 68, the Board must notify the public servant of that determination in writing. The notice must contain a statement of the facts upon which the Board relied for its determination and a statement of the provisions of law allegedly violated. Charter §2603(h)(1); current Board rules §2-01(a).

The financial disclosure law contains no such requirement for probable cause notices in financial disclosure litigation. Indeed, such notices have little use in such litigation, where the sole issue is whether the official filed his or her financial disclosure report (or paid his or her late fine). In addition, as a result of the large number of financial disclosure cases, the requirement of a probable cause notice imposes a substantial and unnecessary burden upon the Board's staff. For these reasons, the amendments eliminate the requirement of probable cause notices in cases arising under the financial disclosure law. See amended Board rule §2-01.

Certified mail. The current Board rules require that the Board serve notices, petitions, orders, and other documents both by first class mail and either by personal service or by certified mail, return receipt requested, or by fax. Current Board rules §2-01(e). Except for petitions, which formally commence the enforcement proceeding, no reason exists for requiring that every Board document be served twice. Such a requirement is wasteful and, particularly in financial disclosure litigation, imposes a significant burden upon the Board's staff, which currently spends substantial time simply filling out forms for certified mail. Furthermore, any method of service permissible under the Civil Practice Law and Rules ("CPLR") in civil litigation should also be permissible in Board proceedings. Accordingly, the amended rule eliminates the dual service requirement, except for petitions served by mail rather than by other methods of service, and expands the methods of service

to include those permitted by the CPLR. For these purposes, the amended rule treats petitions like summonses and other Board documents like interlocutory papers. Amended Board rule §2-05(c), (d).

Applicable rules in hearings. The current Board rules are vague as to which rules apply to hearings conducted by the Board or a Board member and which apply to hearings conducted by the Office of Administrative Trials and Hearings ("OATH") at the Board's request. For example, the current provisions regulating dispositions by agreement, although set forth in the subdivision dealing with Board hearings, would appear also to apply to hearings held before OATH. See current Board rules §2-03(b)(3). The amendments clarify these matters and also clarify that hearings may be conducted by an individual Board member designated by the Board. See amended Board rule §2-03.

Subpoenas. The current Board rules provide that, where the Board hears the case, only the Board may issue a subpoena. The amended rules require that subpoenas be issued by a member of the Board, where the Board or a Board member is hearing the case, or by an administrative law judge, where OATH is hearing the case. See amended Board rule §2-03(b).

Dispositions by agreement. The amended rule clarifies a number of matters relating to the disposition of a proceeding by agreement between the responent and the Board. See amended Board rule §2-05(h). For example, the current rule suggests that a disposition by agreement must await service of a petition (which formally commences the proceeding), even in a Chapter 68 case, although in many instances the Board may be able favorably to dispose of a case by agreement after service of the probable cause notice. The current rule also suggests that an individual Board member may dispose of a case by agreement with the respondent, when in fact only the Board itself may dispose of a case.

The amended rule also introduces certain safeguards, based on OATH's rules, to prevent the appearance of bias as a result of settlement conferences, where the Board or a Board member is hearing the case. See amended Board rule §§2-03(d)(2), 2-05(h). The amended rule adopts the requirements of the OATH rules that offers of disposition are confidential and inadmissible at trial. Finally, the current rule appears to confuse a disposition by agreement and a determination by the Board that a violation of law has occurred. The Board may make such a determination of violation only after a hearing or respondent's default on a hearing or respondent's admission in response to the Board's notice of probable cause. See Charter §2603(h)(3). After consultation with the respondent's agency head, the Board then issues an order of violation imposing or recommending penalties. A disposition by agreement, on the other hand, is an agreement between the Board and the respondent and does not involve any hearing or any determination by the Board that a violation of law has occurred. These matters have been clarified in the amended rule.

Ex parte communications. Current Board rule §2-03(b)(5) prohibits ex parte communications between the prosecuting attorney and the Board once the Board "has determined that there is probable cause to believe that a violation of the provisions of Chapter 68 has occurred." That rule contains at least two defects. First, it is unclear whether "determined" refers to the initial determination of probable cause or the sustaining of probable cause. Second, the rule has proven unnecessarily cumbersome and an impediment to disposition of cases by agreement. The amended rule clarifies that the prohibition against ex parte communications comes into play once the petition is served, that the prohibition only applies to communications concerning the merits of the case, and that ex parte communications are permitted on ministerial matters, in an emergency, or with the consent of the respondent. Amended Board rule §2-05(g).

Reorganization of rules. The current Board hearing rules contain provisions of general application within rules governing specific matters. For example, the provisions on service of documents and computation of time are contained in the rule on the initial determination of probable cause. Current Board rule §2-01(e), (f). The provisions on disposition by agreement and ex parte communications are set out in the rule on hearings. Current Board rule §2-03(b)(3), (b)(5). The amended rule collects these provisions that address matters dealing with

Board proceedings generally into Board rule §2-05, which currently addresses only confidentiality. The rule on hearings is also reorganized. See amended rule §2-03. Specifically, that amended rule is divided into four subdivisions: conduct of hearings generally, subpoenas, conduct of hearings by OATH, and conduct of hearings by the Board or a Board member. The provisions of the current rule §2-03 are incorporated into the appropriate subdivision in the amended rule.

Technical amendments. The Board's rules are clarified by a number of technical amendments, including:

· Measuring time periods in all cases from the service of a document (amended rule §§2-01(a), 2-02(c)(1), 2-04(a));

· Setting out a provision, modelled on CPLR 2103(b)(2), for uniform extensions of time to serve documents in response to documents served by mail (amended Board rule §2-05(e));

· Clarifying that leave for permission to amend a pleading may be granted by the person or entity conducting the hearing (amended Board rule §2-02(d)) (this change was proposed by the Board during the commenting period);

· Deleting unnecessary cross-references to the OATH rules (current Board rule §§2-03(a)(1)-(3), (b)(1), (5));

· Clarifying that Board consultation with an agency head is not required in financial disclosure cases, only in Chapter 68 cases (amended Board rule §2-04(b));

· Establishing procedures, based on OATH's rules, for appearances and substitution of counsel (amended Board rule §2-05(a), (b));

· Changing "legal holiday" to "public holiday" to conform to General Construction Law §24 and changing the provision on extensions of time where a deadline falls on a non-business day to conform to General Construction Law §25-a (amended Board rule §2-05(e)); and

· Specifying that OATH's rules yield to a contrary Board rule (amended Board rule §2-05(i)).

The foregoing amendments to the Board hearing rules should streamline and substantially aid the Board in its enforcement efforts.

Rules of the City of New York

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

53 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-02 Commencement of Formal Proceedings and Pleadings.

(a) **Determination of Probable Cause.** If, after consideration of the public servant's response, the Board determines that there remains probable cause to believe that a violation of the provisions of Chapter 68 of the City Charter has occurred, and the public servant has not elected to forgo the hearing, the Board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred.

If the public servant is subject to the jurisdiction of a state law provision or collective bargaining agreement which provides for the conduct of a disciplinary hearing by another body, the Board shall refer the matter to the appropriate entity. The hearing shall be conducted in accordance with the rules of that entity.

The Board may also refer a matter to the public servant's agency if the Board deems the violation to be minor or if other disciplinary charges are pending there against the public servant.

(b) **Petition.** The Board shall institute formal proceedings by serving a petition on the public servant. The petition shall set forth the facts which, if proved, would constitute a violation of Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the public servant of the public servant's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

(c) **Answer.** (1) **General Rule.** The public servant shall answer the petition by serving an answer on the Board within eight days after service of the petition, unless a different time is fixed by the Board. The public servant shall serve the answer personally or by certified or registered mail, return receipt requested.

(2) **Form and Contents of Answer.** The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The public servant may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the public servant. If the public servant is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the public servant or by his or her representative.

(3) **Effect of Failure to Answer.** If the public servant fails to serve an answer, all allegations of the petition shall be deemed admitted and the Board shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Board may issue an order. If the public servant fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.

(d) **Amendment of Pleadings.** Pleadings shall be amended as promptly as possible upon conditions just to all parties. If a pleading is to be amended less than twenty-five days before the commencement of the hearing, the amendment may be made only on consent of the parties or by leave of the Board, if the Board is conducting the hearing, or by leave of a Board member or Administrative Law Judge, if the Board member or Administrative Law Judge is conducting the hearing.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to paragraph (c) of this section, a respondent's failure to answer the petition constitutes an admission of all of the allegations of the petition. Conflicts of Interest Board v. Sixty-Two City Employees, OATH Index Nos. 593/94, et al. (Apr. 8, 1994).

¶ 2. Pursuant to paragraph (c)(3) of this section, a respondent's failure to answer the petition constitutes an admission of all of the allegations of the petition. **Conflicts of Interest Board v. Ten Public Servants,** OATH Index Nos. 1352/95, **et al.** (June 12, 1995).

¶ 3. Pursuant to this rule, if a public servant fails to answer a petition, the allegations of the petition shall be deemed to be admitted and the prosecuting attorney is only required to submit an offer of proof establishing the factual basis on which the Board may issue an order. **Conflicts of Interest Bd. v. Three Public Servants,** OATH Index Nos. 361, 366, 371/04 (Nov. 6, 2003).

Rules of the City of New York

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

53 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-03 Hearing.

(a) **Conduct of Hearings Generally.** Hearings shall be conducted by the Board or, upon designation by the Board, by a member of the Board or the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH), or such administrative law judge (ALJ) as the Chief Administrative Law Judge shall assign.

(b) **Subpoenas.** Subpoenas requiring the attendance of a witness and subpoenas duces tecum requiring the production of books, papers, and other things may be issued only by (i) the Administrative Law Judge, where the hearing has been referred to OATH, or (ii) a member of the Board, where the hearing is conducted by the Board or by a member of the Board, upon application of a party or upon the Administrative Law Judge's or the Board member's own motion. In addition to or in lieu of these subpoenas, the Administrative Law Judge or the Board member may also issue an order directing the party or person under the control of a party to attend or produce.

(c) **Conduct of Hearings by OATH.** If the Board refers a hearing to OATH, a copy of the petition shall also be sent to OATH at the time the public servant is served with the petition. OATH shall conduct the hearing in accordance with its rules, as set forth in Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(d) **Conduct of Hearings by the Board or by a Board Member.** (1) **Generally.** The Board may hear a case or may designate a member of the Board to hear a case, make findings of fact and conclusions of law, preside over pre-hearing matters and adjournments, and make recommendations to the Board for the proposed disposition of the proceeding. When a hearing is conducted by the Board, the hearing shall be presided over by the Board's Chair or by his or her designee. The Board or Board member shall conduct the hearing, including such pre-hearing matters as conferences, discovery, and motion practice, in conformance with the rules and procedures of OATH, as set forth in

Title 48 of the Rules of the City of New York, except as otherwise provided by these rules.

(2) **Disposition Conferences and Agreements.** If disposition of the proceeding is to be discussed at a conference, the Board shall designate an individual, other than a Board member participating in the hearing, to conduct the conference. During disposition discussions, upon notice to the parties, the person conducting the conference may confer with each party and/or representative separately. Board members shall not be called to testify in any proceeding concerning statements made at a disposition conference.

(3) **Order of Proceedings.** Prosecuting counsel shall have the burden of proof by the preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The public servant may introduce evidence after prosecuting counsel has completed his or her case. Opening statements, if any, shall be made first by prosecuting counsel. Closing statements, if any, shall be made first by the public servant. This order of proceedings may be modified at the discretion of the Board or Board member.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

Rules of the City of New York

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

53 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-04 Decisions and Orders.

(a) **Report to the Board.** When a hearing has been conducted by either OATH or a member of the Board designated to hear the case, a report of recommended findings of fact and conclusions of law and recommendations for the disposition of the proceeding shall be issued and forwarded, along with the original transcript of the proceeding and all documents introduced into the record, to the Board for review and final action. The report shall not be made public. A copy of the report and recommendation shall be sent to all parties and their counsel or other representative in order to afford them the opportunity to comment before final action is taken by the Board. If prosecuting counsel or the public servant wishes to comment, he or she shall do so within ten days of service of the report and recommendation.

(b) **Finding of Violation.** If after the hearing and upon a consideration of all the evidence in the record of hearing, including comments, the Board finds that a public servant has engaged in conduct prohibited by Chapter 68 of the City Charter, the Board shall consult with the head of the agency served or formerly served by the public servant, or in the case of an agency head, consult with the Mayor. Where the Board finds a violation of Chapter 68 or Section 12-110 of the Administrative Code, the Board shall state its final findings of fact and conclusions of law and issue an order imposing any penalties it deems appropriate under either statute. The order shall include notice of the public servant's right to appeal to the New York State Supreme Court. Alternatively, in the case of a violation of Chapter 68, the Board may state its findings and conclusions and recommend a penalty, if any, to the head of the agency served by the public servant or former public servant or, in the case of an agency head or former agency head, to the Mayor. Pursuant to Charter §2604(h)(3), the Board shall not impose penalties against members of the City Council, or public servants employed by the City Council or by members of the City Council, but may state its findings and conclusions and recommend to the City Council such penalties as the Board deems appropriate. When a penalty is recommended, the

head of the agency, Mayor, or City Council shall report to the Board what action was taken.

(c) **Consultation by Agency.** In instances where the Board does not hold a hearing and instead refers a matter to the public servant's agency, that agency shall consult with the Board prior to issuing its final decision.

(d) **Dismissals.** If, after the hearing and upon consideration of the record, the Board finds that a public servant has not engaged in acts prohibited by Chapter 68 of the City Charter or Section 12-110 of the Administrative Code, the Board shall state its findings of facts and conclusions of law and shall issue an order dismissing the petition. The order shall not be made public.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE NOTES

¶ 1. A post-hearing motion requesting the ALJ to increase a fine imposed on a City employee who filed a financial form and intentionally failed to pay the late filing fee was denied. Under 48 RCNY § 1-52, OATH does not have jurisdiction to consider post-hearing motions. Under section 2-04 of this title, counsel's arguments could be forwarded to the Conflict of Interest Board for consideration. **Conflicts of Interest Bd. v. Diaz-Irizarry,** OATH Index No. 2406/00, mem. dec. (June 15, 2001).

Rules of the City of New York

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

53 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 53 Conflicts of Interest Board

CHAPTER 2 PROCEDURAL RULES FOR HEARINGS*

§2-05 General Matters.

(a) **Appearances before the Board.** (1) A party may appear before the Board in person, by an attorney, or by a duly authorized representative. The person appearing for the party shall file a notice of appearance with the Board. The filing of any papers by an attorney or other representative who has not previously appeared shall constitute the filing of a notice of appearance by that person and shall conform to the requirements of paragraphs (2) and (4) of this subdivision.

(2) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "Attorney for (person represented)." The appearance of any other person shall be indicated by the designation "Representative for (person repre- sented)."

(3) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance.

(4) A person may not file a notice of appearance on behalf of a party unless the person has been retained by that party to represent the party before the Board. Filing a notice of appearance constitutes a representation that the person appearing has been so retained.

(b) **Withdrawal and Substitution of Counsel.** (1) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the Board, upon application. Withdrawals shall not be granted unless upon consent of the client or when other cause exists, as delineated in the applicable provisions of the Code of

Professional Responsibility.

(2) Notices of substitution of counsel served and filed more than twenty days prior to a hearing before the Board or before a member of the Board may be filed without leave of the Board or Board member. Notices of substitution of counsel served and filed less than twenty-one days prior to a hearing before the Board or before a member of the Board may be filed only with the permission of the Board or Board member, which permission shall be freely given, absent prejudice or substantial delay of the proceedings.

(c) **Service of Petition by Board.** A petition shall be served on the public servant (i) in the manner provided in §312-a, or subdivisions 1, 2, or 4 of §308, of the New York Civil Practice Law and Rules for service of a summons or (ii) by both certified mail, return receipt requested, and first class mail to the public servant's last known residence or actual place of business or (iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) of this subdivision, or (iv) in any manner agreed upon by counsel to the Board and the public servant or his or her representative.

(d) **Service of Other Documents by Board.** Notices, orders, and all other documents, except petitions and subpoenas, originating with the Board shall be served on the public servant (i) by personal delivery to the public servant or (ii) by first class mail to the public servant's last known residence or actual place of business or (iii) by overnight delivery service to the public servant's last known residence or actual place of business or (iv) by telephonic facsimile (FAX) or similar transmission or (v) by leaving the paper at the public servant's last known residence with a person of suitable age and discretion or (vi) in such manner as the Board directs, if service is impracticable under paragraphs (i), (ii), (iii), (iv), or (v) of this subdivision, or (vii) in any manner agreed upon by counsel to the Board and the public servant or his or her representative. Where the public servant has appeared by a representative, all papers served by the Board subsequent to that appearance shall be served upon the representative by one of the methods provided in paragraphs (i)-(vii) of this subdivision.

(e) **Computation of Time.** The computation of any time period referred to in these rules shall be calculated in calendar days, except that when the last day of the time period is a Saturday, Sunday, or public holiday, the period shall run until the end of the next following business day. Where a period of time prescribed by the rules set forth in this chapter is measured from the service of a paper and service of that paper is made in the manner provided by paragraph (ii) of subdivision (a) or paragraph (ii) of subdivision (b) of this section, five days shall be added to the prescribed period.

(f) **Confidentiality.** All matters relating to complaints submitted to or inquired into by the Board, or any action taken by the Board in connection therewith or hearings conducted by the Board or OATH, shall be kept confidential unless the public servant waives confidentiality and the Board determines that confidentiality is not otherwise required. Hearings conducted by the Board or by OATH shall be public if requested by the public servant. Final findings, conclusions, and orders issued upon a violation of Chapter 68 shall be made public.

(g) **Ex Parte Communications with Board.** (1) After service of the petition in a case, counsel conducting the prosecution of the case on behalf of the Board shall not communicate ex parte with any member of the Board concerning the merits of the case, except as provided in paragraph (2) of this subdivision.

(2) Counsel conducting the prosecution of a case on behalf of the Board may communicate ex parte with the Board, or any member thereof, with respect to ministerial matters involving the case or on consent of the respondent or respondent's counsel or in an emergency.

(h) **Disposition by Agreement.** At any time after the service of a notice of probable cause in a proceeding brought pursuant to Chapter 68 or at any time after service of a petition in a proceeding brought pursuant to §12-110 of the Administrative Code, the public servant and the Board may agree to dispose of the case by agreement. For this purpose, the Board or any Board member designated by the Board may conduct a disposition conference, provided that, when the

Board or a member of the Board conducts or is to conduct the hearing, the Board shall comply with the requirements of §2-03(d)(2). All offers of disposition, whether made at a conference, hearing, or otherwise, shall be confidential and shall be inadmissible at trial of any case. If a disposition by agreement is reached, it shall be reduced to writing and signed by the public servant or his or her representative and the Board or, in the discretion of the Board, placed on the record. When a disposition by agreement contains an acknowledgment that a public servant's conduct has violated a provision of Chapter 68 of the City Charter or §12-110 of the Administrative Code, that disposition by agreement shall be made public by the Board.

(i) **OATH Rules.** In the event of any inconsistency between these rules and the rules of the Office of Administrative Trials and Hearings, these rules shall govern.

HISTORICAL NOTE

Section amended City Record Feb. 6, 1996 eff. Mar. 7, 1996. [See T53 Chapter 2 footnote]

Section added City Record Aug. 5, 1991 eff. Sept. 4, 1991.

CASE NOTES

¶ 1. Failure to comply with subsection (c) of this section did not deprive the Board or OATH of jurisdiction where it was clear respondent had actual notice of the petition. **Conflicts of Interest Bd. v. Pentangelo**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007), **adopting,** OATH Index No. 422/07 (Mar. 8, 2007).

¶ 2. Absent agreement by respondent's attorney to accept service of the petition on behalf of his/her client, subdivision (c) of this section does not permit the Board to serve the petition on respondent's attorney. Where, however, respondent received timely actual notice of the petition that was served upon his attorney, any irregularity in the manner of service was harmless and provided no basis to dismiss the petition. **Conflicts of Interest Bd. v. Pentangelo**, OATH Index No. 422/07 (Mar. 8, 2007), **adopted**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007).

¶ 3. Provision in subdivision (d) for service of papers upon party's attorney after attorney has appeared in the case does not apply to service of the petition. **Conflicts of Interest Bd. v. Pentangelo**, OATH Index No. 422/07 (Mar. 8, 2007), **adopted**, Conflicts of Interest Bd. Case No. 99-026 (July 13, 2007).

1 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-01 Scope and Enforcement.

These Rules and Regulations shall:

(a) Apply to all property under the control of the Division of Facilities Management and Construction Services.

(b) Be in addition to and supplement applicable City, State and Federal laws and regulations.

(c) Be enforced by the Division of Facilities Management and Construction Services and by each occupant agency.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-02 Definitions.

The following words and phrases as used in these Rules and Regulations shall have the following meaning:

Authorized individual. An "authorized individual" is any police officer, peace officer, special patrolman, city official or any individual designated by the Deputy Commissioner of the Division of Facilities Management and Construction Services or the head of an occupant agency to exercise authority in the management, operation and utilization of property.

Deputy Commissioner. The "Deputy Commissioner" is the Deputy Commissioner of the Division of Facilities Management and Construction Services.

Occupant agency. An "occupant agency" is any agency of the City of New York which occupies or possesses any part of property under the control of the Division of Facilities Management and Construction Services.

Property. "Property" is any real estate which is owned, leased or operated by the City of New York or any agency thereof, which is under the control of the Division of Facilities Management and Construction Services.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-03 Operating Hours; Emergencies; Packages.

(a) Except as otherwise ordered, property shall be closed to the public after normal working hours.

(b) Property may be closed to the public during emergencies and at such other times as may be necessary for the conduct of business.

(c) Anyone admitted on the property may be required to show identification and to sign a register.

(d) Persons carrying packages, briefcases and other types of containers shall be required to open them for inspection when so requested by an authorized individual as a condition of entering or leaving the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-04 Preservation of Property.

While on or about the property, no person shall:

(a) Dump, litter or throw any refuse, dirt or rubbish.

(b) Abandon a vehicle.

(c) Throw or project a stone or other missile.

(d) Climb upon the roof of any building or enter any area which is posted as being closed to the public.

(e) Destroy or damage any structure or remove any part thereof.

(f) Destroy, damage or remove any property found on or within any structure.

(g) Interfere with the operation of any utility system servicing the property.

(h) Injure, mutilate, deface, alter, change, displace, remove or destroy any posted sign or notice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-05 Conformity with Signs and Official Directions.

Persons on or about the property shall comply with official signs and obey directions given by authorized individuals.

HISTORICAL NOTE

Section in original publication July 1, 1991.

6 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-06 Gambling.

With the exception of those activities conducted by the Off-Track Betting Corporation, the operation of, or participation in, unauthorized lotteries, pools or games for money or something of value on or about the property is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-07 Alcoholic Beverages, Drugs and Similar Substances.

(a) No person may enter upon property while his ability to function has been impaired by alcohol, drugs or any other substance.

(b) No person shall bring upon or use while on the property any substance capable of impairing normal human functioning.

(c) The above prohibition shall not apply to drugs prescribed by a physician or when permission has been obtained either from the Deputy Commissioner or head of the occupant agency.

HISTORICAL NOTE

Section in original publication July 1, 1991.

8 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-08 Soliciting, Vending and Debt Collection.

The soliciting of alms, subscriptions, contributions, commercial soliciting and vending of all kinds without the prior written approval of the Commissioner or his/her designee, and the collecting of private debts in or on the property is prohibited. This rule shall not apply to national and local drives for funds for charitable, educational or other such purposes sponsored or approved by the Commissioner or his/her designee, head of an occupant agency or elected city officials. Any person who violates this rule in any public building may be expelled from such building. Repeated violations of this rule may result in the violator being banned from the premises. Any person may appeal such ban in writing to the Commissioner.

HISTORICAL NOTE

Section amended City Record Mar. 3, 1998 eff. Apr. 2, 1998. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 1998:

New York City Charter ("Charter") Section 811 authorizes the Commissioner of the Department of Citywide Administrative Services to perform all the functions and operations of the City relating to the maintenance and care of

public buildings and facilities. Pursuant to these powers, the Department has promulgated rules regulating behavior on City property under its control. This amendment allows the Department to expel and ban any person who violates the prohibition on private soliciting, vending and debt collection on such City property without the prior approval of the Department. The amendment facilitates the performance of the Department in its maintenance and operation of City property.

Rules of the City of New York

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

55 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-09 Handbills.

(a) No person shall distribute any material such as pamphlets, handbills and flyers on the property unless the prior written approval of the Deputy Commissioner or head of the occupant agency has been obtained.

(b) No person shall place or cause to be placed upon or affixed to the property any words, characters, illustrations or devices as a notice of, or reference to any matter or event. This prohibition shall not apply to personal notices posted by employees on authorized bulletin boards, or when the prior written approval of the Deputy Commissioner has been obtained.

(c) The foregoing prohibitions shall not apply to notices or other materials posted or distributed pursuant to provisions made or contained in collective bargaining agreements.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-10 Animals.

Unless otherwise authorized, no person shall bring any animal, except properly harnessed seeing-eye dogs, onto the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-11 Vehicular Traffic.

(a) A person driving a vehicle upon the property shall operate it in a safe manner and comply with posted traffic signs and directions given by authorized individuals.

(b) A person driving a vehicle upon the property shall not:

(1) Park without a permit.

(2) Park in any area reserved for city vehicles or authorized individuals.

(3) Block entrances, driveways, walks, ramps, platforms or hydrants.

HISTORICAL NOTE

Section in original publication July 1, 1991.

12 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-12 Weapons and Explosives.

Unless otherwise ordered by law or regulation, no person shall carry any gun, firearm, explosives or deadly or dangerous weapon upon the property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-13 Disturbances.

Any disorderly conduct or conduct on the property which creates loud and unusual noise or which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways and parking lots or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which impedes or disturbs the general public from obtaining the administrative services provided on the property, is prohibited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 1 CONDUCT WITHIN STRUCTURES AND GROUNDS UNDER THE CONTROL OF THE DIVISION OF FACILITIES MANAGEMENT AND CONSTRUCTION SERVICES

§1-14 Photographs.

(a) Except for those holding permits from the Executive Director of the Office of Economic Development and members of the press who hold working press identification cards, no person shall take photographs or moving pictures within any structure located on the property.

(b) **Courtrooms.** The taking of photographs in a courtroom or the broadcasting or telecasting from a courtroom at any time or on any occasion is prohibited except where prior written permission has been obtained from the presiding justice of the Appellate Division of the Department wherein the courthouse is situated.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 3 FEES

§3-01 Fees.

(a) The fees charged by the Division of Real Property fall into the following categories:

(I) Lease application fee charged for the processing of lease applications.

(II) Title closing mortgage fees for preparation and processing of various documents used in connection with the auctioning and sale of real property by DRP.

(III) Test boring license fees.

(IV) Carnarsie cemetery fees for a certificate of burial right, perpetual care, annual care, foundation charges, interment and other services.

(V) Redemption of properties taken In Rem - management Fees.

(b) The fee schedule below lists each of these categories separately. All fees, unless otherwise specifically provided, shall be paid by certified cashier's check or postal order payable to the order of the Division of Real Property.

Category I-Lease application fee-$25

Category II-Title closings & mortgage fees for non-residential properties sold by City

Fee

(i)	Duplicate document (e.g. mortgage, deed)	$250
(ii)	Preparation of purchase Money mortgage and mortgage note Mortgage amount	
	Up to $40,000	$125
	$40,001-$100,000	$250
	Over $100,000	$500
(iii)	Preparation of other purchase money Mortgage related documents (assignments, satisfactions, subordinations and assumptions of the purchase money mortgage)	$150/per document
(iv)	Attendance of DRP employees at locations other than DRP office of execute transactions	$250 for each day or part thereof for each employee
(v)	Nonrefundable mortgage application fee	1% of maximum mortgage available, but not less than $300, nor more than $5,000
(vi)	Auctioneer's fee due from purchaser at the auction and payable by check drawn to order of auctioneer identified at time of sale,	

Purchase Price	Fee
$1,000 or less	$ 10
$1,001 to $5,000	$ 25
$5,001 to $7,500	$ 35
$7,501 to $25,000	$ 50
$25,001 to $50,000	$ 75
$50,001 to $75,000	$100
$75,001 to $100,000	$150
$100,001 to $200,000	$200
Above $200,000	.1% of the purchase price, but in no event greater than $500

(vii)	Assignment of purchaser's right Under memorandum of sale	$150.00
(viii)	Assignment of contract within 7 days of sale	$ 0
	Between 8 and 14 days from sale	$100.00
	After 14 days from sale	Not Allowed

Category III-Test Boring License fee

Public and Quasi Public Agencies	$ 1.00
All Other Applicants	$350.00

Category IV-Carnarsie Cemetery

Schedule of Prices Certificate of Burial Right

A certificate of burial right grants the privilege of interment or entombment in a specified grave or plot. Each grave measures 3 feet by 9 feet. Two interments may be in each grave in the traditional area and three in each grave in the park area. Each plot in the urn gardens measures 2 feet by 2 feet and permits the interment of several urns. Prices of certificates of burial rights are as follows:

[See tabular material in printed version]

Category V-Redemption of properties taken In Rem-Management fees

(i) Seven (7%) percent of all rents billed during the period of management by the City (from the date vesting through the date of release); or Twenty-Five ($25.00) Dollars per month, or fraction thereof, during the period of management by the City; whichever is greater.

(ii) Vacant property, deriving no income, is to be charged the minimum fee of Twenty-Five ($25.00) Dollars per month, or fraction thereof, during the period of management by the City.

Note: The Twenty-Five ($25.00) Dollar fee is to be applied to each lot within the "property"only if the lots are not contiguous.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subds. (a), (b) amended City Record May 15, 1992 eff. June 14, 1992.

Subd. (b) Category III deleted and added City Record Nov. 15, 1999 eff. Dec. 15, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 15, 1999:

New York City Charter, §824, authorizes the Commissioner of the Department of Citywide Administrative Services to manage and dispose of commercial real property of the City not used for public purposes. Such management and disposition entails a number of tasks including granting licenses to purchasers of such real property to enable them to enter upon the property to take test boring samples prior to closing of title. Previously DCAS has charged a flat rate of $350 to all applicants for test boring licenses. It has been determined that amending the fee schedule to charge a nominal fee of $1.00 to applicants which are public or quasi-public agencies would better serve public policy by not imposing an undue burden on publicly funded institutions engaged in acquisition of real property.

16 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 4 APPROVAL OF CONTRACT AWARDS

§4-01 Approving Awards of Contracts to Other Than the Lowest Responsible Bidder: (§313(b)(2) New York City Charter). [Repealed]

HISTORICAL NOTE

Section repealed City Record Apr. 14, 1999 eff. May 14, 1999. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record April 14, 1999:

After consultation with the Mayor's Office of Contracts, the Department of Citywide Administrative Services (DCAS) is proposing to repeal §4-01 of Chapter 4 of its rules, which describes the conditions under which DCAS will forward to the Mayor, for consideration for award to other than the lowest responsible bidder, contracts for certain goods manufactured by New York City based firms. The repeal of this rule reflects the decision to terminate the local preference program.

Rules of the City of New York

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

55 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 5 DISPOSITION OF PERSONAL PROPERTY

§5-01 Disposition of Personal Property of the City.

(a) Personal property may be disposed of by the Division of Municipal Supplies by public or private sale or as otherwise authorized by law or regulation.

(1) The prior approval of the Comptroller is not required on a sale of personal property where such sale is to the highest responsible bidder at public auction or after receipt of sealed bids after advertisement in at least ten successive issues of The City Record. A bidder may be disqualified in accordance with applicable laws and regulations.

(2) If the estimated sales value of the personal property is $5,000 or less, the Division of Municipal Supply Services may make requests for offers, if possible, to at least three persons, firms or corporations separately engaged in the regular business of selling and buying materials of the class offered. All bids from other bidders shall be duly considered in making an award. Award of such informal sale, if any, must be made to the highest responsible bidder. However, no such award shall be valid without the prior approval of the comptroller. The total amount of such informal sales of the same class of materials shall not exceed $5,000 within a thirty-day period. The classification of materials of "the same class" shall be as determined by the commissioner and approved by the comptroller. Such classification shall be filed in the Division of Municipal Supply Services and the Office of the Comptroller and shall be effective upon publication in the City Record.

(3) When no bid or acceptable bid is received on an advertised sale, the Commissioner may waive the advertising requirements in an informal re-bid. Such sale on an informal re-bid shall be made only with the approval of the Comptroller. The Commissioner shall issue a certificate in writing that no acceptable bid was received when the proposal was originally advertised. Such certificate shall be filed in the Division of Municipal Supplies and with the

Comptroller.

(4) Personal property may be given to a vendor in part payment on a contract at public letting to furnish new personal property at the lowest net price.

(5) Personal property may be sold at private sale without public notice, at no less than the value fixed by the Division of Municipal Supplies subject to the approval of the Comptroller.

(6) Personal property may be transferred between the various City agencies by order of the Commissioner.

(7) All materials, supplies and equipment which the Commissioner considers of no sale value or use to the City may be destroyed or otherwise disposed of in the most advantageous manner under the direction of the Commissioner. This provision shall not apply to public records until their destruction or other disposition has been duly authorized in accordance with applicable law or regulation.

(8) Notwithstanding any of the foregoing, property classified by the commissioner as "memorabilia" may be disposed of in the best interests of the city by public, private, wholesale or retail sale under the direction of the commissioner without the prior approval of the comptroller. "Memorabilia" is defined as surplus or obsolete personal property, excluding aircraft, watercraft and land vehicles, not exceeding an estimated per-unit sale value of $5,000, which by reason of its use by the city has historic, aesthetic, novelty or sentimental value in excess of the property's salvage value. In addition to a wholesale or retail price not exceeding an estimated per-unit sale value of $5,000, the commissioner is authorized to negotiate in the best interests of the city to obtain additional income from the disposition of "memorabilia".

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Nov. 21, 2003 eff. Dec. 21, 2003. [See Note 2]

Subd. (a) par (8) amended City Record Nov. 21, 2003 eff. Dec. 21, 2003. [SeeNote 2]

Subd. (a) par (8) added City Record May 4, 1999 eff. June 3, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 4, 1999:

New York City Charter Section 823 authorizes the Commissioner of the Department of Citywide Administrative Services to promulgate rules concerning the disposition of personal property. Current procedures for the disposition of surplus and obsolete property require the Department of Citywide Administrative Services to dispose of such property inefficiently and without maximizing the revenue received for surplus with historic, aesthetic, novelty or sentimental value greater than the property's salvage value. Adoption of this amendment facilitates the performance of the Department in the disposal of surplus property that has historic, aesthetic, novelty or sentimental value by allowing the Department to dispose of such property efficiently and in a manner which maximizes the revenue obtained from such disposal.

2. Statement of Basis and Purpose in City Record Nov. 21, 2003: New York City Charter Section 823 authorizes the commissioner of the Department of Citywide Administrative Services to promulgate rules concerning the disposition of personal property. Current rules allow for the disposition of personal property with an estimated sales value of $2,500 or less through an informal sale. Moreover, "memorabilia" is currently defined as surplus or obsolete personal property excluding aircraft, watercraft and land vehicles, not exceeding an estimated per-unit sale value of $2,500 which by reason of its use by the city has historic, aesthetic, novelty or sentimental value in excess of the

property's salvage value. This amendment increases the respective estimated sales values to not exceed $5,000 to expedite dispositions of personal property with relatively small value and, further, allows the Department to realize additional revenue from its disposition of "memorabilia".

Rules of the City of New York

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

55 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 6 "ORIGINAL EQUIPMENT MANUFACTURER AGREEMENTS" FOR PURPOSES OF THE CITY'S ANTI-APARTHEID LAW

§6-01 Definitions.

For purposes of the City's anti-apartheid rider, included in City contracts pursuant to Administrative Code Section 6-115*1 whenever the contractor has agreed to sign the rider, a company shall be deemed to be providing goods or services to South Africa pursuant to an "original equipment manufacturer agreement which provides for or authorizes the sale of equipment, alone or as part of a finished product, to a South African entity" in accordance with the following definitions:

(a) "Company #1" includes the company which seeks to enter a contract with a City agency, and is determining whether it is qualified to sign the City's anti-apartheid rider, and all "affiliates" of that company, as that term is defined in Administrative Code Section 6-115(a)(8).*

(b) "Sale" includes lease or rental of equipment.

(c) An "original equipment manufacturer agreement" ("O.E.M. agreement") is an agreement between a manufacturer (Company #1) and another manufacturer, a distributor, or a value-added reseller (Company #2), such that Company #1 provides products (which may include parts, components and/or subassemblies) and authorizes the sale of such products by Company #2 under any of the following circumstances:

(1) Company #1 makes a sale of its equipment to Company #2, which, with or without making minor modifications to the equipment, privately labels and sells it. An example would be an O.E.M. agreement whereby Company #2 purchases a copier from Company #1, and resells it as a copier under its own brand name, with or without

having first made minor modifications to the copier's packaging.

(2) Company #1 makes a sale of its equipment to Company #2, which provides substantial added value to Company #1's product before selling it. Company #2's added value may be major application software and/or special hardware integrated into the product. Examples include:

(i) an O.E.M. agreement whereby Company #2 adds banking application software to Company #1's personal computer, marketing the resulting product as a banking teller station under Company #2's brand name.

(ii) an O.E.M. agreement whereby Company #2 embeds a subassembly purchased from Company #1, such as a disk drive or a telecommunications multiplexor, into Company #2's computer system, and then sells that computer system under its own brand name.

(iii) Company #1 makes a sale to Company #2, which resells Company #1's product with Company #1's name still intact on the product. An example would be an O.E.M. agreement whereby Company #2 sells Company #1's word processor and licensed software as an authorized dealer (exclusive or non-exclusive) of Company #1.

(d) An O.E.M. agreement for equipment sold by a manufacturer of computers, copiers or telecommunications equipment is considered to "provide for or authorize the sale of such equipment, alone or as part of a finished product, to a South African entity" if any of the following conditions is met:

(1) The O.E.M. agreement states that Company #2 may sell equipment made by Company #1 (with or without modification by Company #2) in South Africa.

(2) The equipment covered by the agreement (as sold by Company #1 or after modification by Company #2, if any is made) falls under one of the designated classifications government by the Export Administration Act of 1979 (50 U.S.C. App. Section 2401) and the associated federal regulations for Electronics and Precision Instruments (15 C.F.R. Section 799.1, Supp. 1, Group 5), such that Company #1 knows of the resale or distribution of the equipment to South Africa by Company #2 and assists Company #2 in procuring required governmental authorizations for such resale or distribution.

(3) Company #1 has actual knowledge of resale or distribution of the equipment to South Africa by Company #2 and has not either terminated its contractual arrangement with Company #2 concerning such equipment or otherwise prohibited Company #2 from making further resale or distribution of Company #1's equipment to South Africa.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Administrative Code §6-115 was repealed by L.L. 75/1993 §4 eff. Sept. 24, 1993.

Rules of the City of New York

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

55 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-01 Definitions.

Annual Care. The term "Annual Care" means care provided by the cemetery on a year-by-year basis upon payment of an annual fee by or on behalf of a Plot Holder.

Burial Grounds. The term "Burial Grounds" means any burial ground which formerly was the public property of any town, village or city consolidated into and now a part of the City of New York.

Burial Right. The term "Burial Right" means only the privilege of interment or entombment in the cemetery. It does not convey an ownership of land or other interest in the grave, or plot to which it refers.

Care. The term "Care" means the cutting of the grass on plots at reasonable intervals, the raking and cleaning of the plots and the maintaining of the grade and turf of the plots; meaning and intending the general preservation of the plots to the end that said plots shall remain and be reasonably cared for as cemetery plots. The term "Care" shall in no case be construed to mean the maintenance, repair or replacement of any gravestones or monumental structures or flowers or ornamental plants; nor the maintenance or doing of any special or unusual work in the cemetery; nor does it mean the reconstruction of any marble, granite, bronze or concrete work on any section or plot, or any portion or portions thereof in the cemetery or buildings, or structures, caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots or by order of the military authorities, whether the damage be direct or collateral, other than as herein provided.

Cemetery. The term "Cemetery" means the Canarsie Cemetery (Block 8038, Lot 1; Block 8038, Lot 10; Block 8039, Lot 1; Block 8041, Lot 1; and Block 8041, Lot 2: Borough of Brooklyn), a former town Burial Ground within the

meaning of §100.01 of these Rules and Regulations.

Certificate of Burial Right. The term "Certificate of Burial Right" means a document granting only the privilege of interment and entombment as defined above and not to be construed as a deed to the land itself.

Commissioner. The term "Commissioner" means the Deputy Commissioner of the Department of Citywide Administrative Services, Division of Real Estate Services, or authorized representative designated in writing by the Commissioner or his/her successor in office.

Domestic Partner. The term "Domestic Partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.)

Grave. The term "Grave" means a space of ground (approximately three feet by nine feet) in the Cemetery used or intended to be used for the burial of human remains.

Interment. The term "Interment" means the permanent disposition of the remains of a deceased person by entombment or burial.

Memorial. The term "Memorial" means a monument, marker, tombstone, tablet, headstone or private mausoleum or tomb for family or individual use.

Park Area. The term "Park Area" means a landscaped area and includes Sections 3, 4, 5, 11 and 12 of the cemetery.

Perpetual Care. The term "Perpetual Care" means care provided by the cemetery forever upon payment of a one-time fee by or on behalf of a plot holder.

Plot. The term "Plot" means a lot, plot, plat or part thereof or a grave in the Cemetery.

Plot Holder. The term "Plot Holder" means any person having a burial right in a plot in the cemetery.

Traditional Area. The term "Traditional Area" means Sections A, B, C, 1, 6, 7, 8, 9, 10 and 14 of the Cemetery.

Urn Gardens. The term "Urn Gardens" means that portion of the cemetery set aside for the burial of cremated remains.

Visitor. The term "Visitor" means any person who may enter the former town burial grounds or cemetery grounds and includes plot holders and workers of all kinds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Domestic partner definition added City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 31, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the

office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City Housing Authority and the Department of Housing Preservation and Development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders and the authority of the Commissioner of Citywide Administrative Services pursuant to New York City Charter §814(c) and Administrative Code §4-117, the Department is now acting to provide that rules applicable to spouses, as specified herein, should now be extended to domestic partners and/or children of domestic partners. These amendments will define domestic partner as a person who has registered a domestic partnership with the City Clerk; will grant the right to be buried with a domestic partner in the Canarsie Cemetery; and will allow eligibility for special examination or refund of fees for certain candidates for civil service and license examinations in the event of the death of a domestic partner and/or child of a domestic partner within one week prior to the date the test was originally held.

Rules of the City of New York

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

55 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-02 Purchase of Burial Rights.

(a) All persons wishing to purchase burial rights in the cemetery must execute applications provided for that purpose.

(b) The Commissioner reserves the right to refuse to accept any application form which is either incomplete or improperly executed. The Commissioner further reserves the right not to honor an application when it is learned that the application has been fraudulently completed or if information found therein is found to be incorrect. The Commissioner reserves the right to limit the number of burial rights purchased by any individual, association or corporation.

(c) Acceptance of payment along with the application should not be deemed an automatic granting of Burial Rights. Burial rights do not vest until a fully executed certificate of burial right is issued to the applicant.

(d) The purchase after January 19, 1949 of burial rights includes perpetual care.

(e) It shall be the obligation of the plot holder to notify the cemetery of any change in his/her post office address. Notice sent to a plot holder by ordinary mail at the last address of record at the cemetery shall be considered sufficient and proper notification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-03 Interments.

(a) Interment privileges can be received only from the plot holders, and no persons can be recognized as plot holders unless their names appear as such upon the records of the cemetery.

(b) The Commissioner reserves the right to refuse Interments in any Plot and to refuse to open any burial space for any purpose, except by court order or on written application by the plot holder or by the person designated to represent the plot holder.

(c) All Interments, disinterments or removals, including all openings and closings of Graves shall be made only by cemetery personnel.

(d) All funerals, upon entering the cemetery grounds shall be under the charge of the superintendent and/or his/her assistant.

(e) Once a casket containing a body is within the confines of the cemetery grounds, no funeral director or his/her embalmer, assistant, employee or agent shall be permitted to open the casket or touch the body without the consent of a legal representative of the deceased, or without an order of a court of competent jurisdiction.

(f) The right is reserved by the Commissioner to insist upon at least 48 hours notice prior to any interment, and to at least one week's notice prior to any disinterment or removal.

(g) When instructions regarding the location of an interment space in a plot cannot be obtained, or are indefinite, or

when for any reason the interment space cannot be opened when specified, the superintendent of the cemetery may, in his/her discretion, open it in such a location in the plot as he/she deems best and proper, so as not to delay the funeral; and the cemetery shall not be liable in damages for such action or for any error so made; nor shall the cemetery be held responsible for any order given over the telephone, or for any mistake occurring from the lack of precise and proper instructions as to the particular plot space, size and location where interment is desired.

(h) The cemetery shall in no way be liable for any delay in the interment of a body where a protest to the interment has been made, or where the Rules and Regulations have not been complied with; and, further, the superintendent of the cemetery reserves the right, under such circumstances, to place the body in a City receiving vault until the full rights have been determined. The cemetery shall be under no duty to recognize any protests of Interments unless they are in writing and duly filed with the cemetery.

(i) The cemetery shall not be liable for the interment permit nor for the identity of the person sought to be interred; nor shall the cemetery be liable in any way for the embalming of the body.

(j) Where a plot is owned by a church, lodge or other society, interments shall be limited to those actually authorized by such church, lodge, etc.

(k) No interment shall be permitted in any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot head by the plot holder.

(l) There shall be no interments on weekends and legal holidays.

(m) No interments shall be begun after 3:30 p.m.

(n) No more than two interments shall be permitted in each grave in the traditional area and no more than three interments shall be permitted in each grave in the park area.

(o) No disinterment or removal shall be allowed except for a good reason and with the written permission of the Commissioner, the written authorization of the plot holder and nearest of kin, and all permits required by law.

(p) The cemetery shall exercise the utmost care in making a removal, but it shall assume no liability for damage to any casket, burial case or urn incurred in making the removal.

(q) The cemetery reserves the right to correct any errors that may be made by it either in making disinterments or removals, or in the description, transfer or sale and substituting and selling in lieu thereof another burial right of equal value and similar location as far as possible, or as may be selected by the cemetery, or in the sole discretion of the cemetery, in allowing for a request to the Comptroller of the City of New York for a refund of the money paid on account of said Burial Right purchase. The cemetery shall also have the right to correct any error made by placing an improper inscription, including an incorrect name or date on any memorial. The cemetery shall not be liable in damages for any such errors.

(r) The cemetery shall not be deemed in default nor shall it be liable for any failure of performance event or any damages resulting from an "unavoidable delay." An "unavoidable delay" shall mean (1) strikes, lockouts, or labor disputes; (2) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental actions, civil commotion, insurrection, revolution, sabotage or fire or other casualty or other conditions similar to those enumerated in this section.

HISTORICAL NOTE

Section in original publication July 1, 1991.

55 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-04 Plot Usage and Maintenance.

(a) All plots shall be used as a place of burial for the dead or the remains of deceased persons and for no other purpose whatever.

(b) All grading, landscaping work and improvements of any kind shall be under the direction of and subject to the consent, satisfaction and approval of the Commissioner.

(c) Cemetery personnel may at any time enter upon a plot to keep it neat, to cut grass and to remove weeds, wilted flowers and debris, but nothing herein contained shall obligate the cemetery to render any such service without compensation therefor.

(d) Floral frames, when removed from a plot, unless specific instructions are given to the contrary by those lawfully entitled to them may be disposed of by the cemetery superintendent in any manner he/she sees fit.

(e) No plants, trees, shrubs or grave coverings, or other decorations may be introduced into any plot without the written consent of the Commissioner, and no plants, trees, shrubs or other covering growing within a plot or border shall be cut down or destroyed without the consent of the Commissioner.

(f) Mounds and shrubs are prohibited in the park area and in section 2 of the cemetery.

(g) Artificial flowers and plants are prohibited.

(h) In the event annual care charges have not been paid for five successive years, any empty graves or plots for

which these charges remain unpaid shall be deemed abandoned, all rights therein shall be deemed terminated, and burial rights therein may be granted by the cemetery to others.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-05 Memorials.

(a) No memorial shall be placed on any plot except by the plot holder or his/her authorized representative.

(b) Designs, plans and specifications for proposed memorials, or other improvements must be submitted on written application, signed by the plot holder. Written approval of the Commissioner is required before work can be begun. The foundation work is to be done at the expense of the plot holder or his/her representatives, heirs or assignees. Foundations shall be of concrete.

(c) Memorial dealers shall abide by these Rules and Regulations. Violations of any such Rule or Regulation by any producer or retail dealer may be cause for disapproval by the Commissioner of such producer or retailer.

(d) All memorials are to be constructed of natural stone. No artificial stone of any description is permitted.

(e) Should any memorial become unsightly, dilapidated or a menace to visitors, the superintendent of the cemetery shall have the right, at the expense of the plot holder, either to correct the condition or to remove the memorial, if after due notice to the plot holder, sent by registered mail, the plot holder fails to take proper steps to remedy the conditions, within a reasonable time, not exceeding thirty days.

(f) Enclosures, fences, copings, benches and vases are not permitted unless approved by the Commissioner.

(g) While a funeral or interment is being conducted, all work of any description which is near enough to disturb, either by noise or otherwise, shall cease. No work will be permitted on Saturdays, Sundays or legal holidays. All

deliveries shall be made at the cemetery prior to 4:00 p.m. on weekdays.

(h) No memorials are allowed in the park area and urn gardens, except for markers flush with the ground.

(i) Memorials in section 2 of the cemetery are limited to two feet wide, by two feet high, by one foot thick.

(j) No memorial or foundation shall be constructed on any plot so long as there are any outstanding charges due the cemetery with respect to that plot or any other plot held by the plot holder.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-06 Mausoleum.

(a) No mausoleum shall be constructed without prior written approval of the Commissioner. No such approval shall be granted until satisfactory design plans and construction contracts have been submitted to the Commissioner.

(b) The plot holder shall make, at his/her own expense, a survey; provide and pay for his/her own contractor to excavate and construct the mausoleum foundation; and have his/her contractor provide the cemetery with a guarantee that only first grade materials will be used; that it will be executed in first grade workmanship; and should fault develop within five years due to setting, treatment or handling, the required repairs or replacements will be made by the contractor without cost to the cemetery. Unless such guarantee in writing is furnished the Commissioner, approval for construction of a mausoleum cannot be had. Foundations must be at least six feet below grade.

(c) The plot holder must provide for perpetual care and maintenance of a mausoleum by payment to the cemetery of fifteen percent of the total cost of the structure within thirty days of completion of construction.

(d) Only substantially non-corrosive metals of approved permanency shall be permitted for mausoleum or memorial fixtures, such as doors, window grilles, statutary, etc.

(e) Care and maintenance of mausoleums shall include cleaning the interiors and stained glass; cleaning and oiling bronze work unless otherwise requested; repainting and cleaning the exterior stone where and when necessary; and repairing damage caused by wear and tear.

(f) In the event the mausoleum, due to any reason, is badly damaged in the opinion of the Commissioner, he/she

shall request the Estate of the deceased or the plot holder restore the mausoleum to a condition satisfactory to the Commissioner. If these repairs are not made within a reasonable time, not to exceed sixty days, the Commissioner reserves the right to remove the remaining mausoleum and inter the bodies in the plot over which the mausoleum had been constructed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-07 Inheritance of Burial Right.

(a) In the event of the death of the owner of a burial right any and all privileges (rights) of the plot holder shall pass to the plot holder's family as set forth in the following sections.

(b) The surviving spouse or surviving domestic partner of the owner of the certificate of burial right of record has the right to be buried with his/her spouse or domestic partner. This right may be waived at any time but terminates with burial elsewhere.

(c) Where burial privileges in the grave or plot are held in the name of one person only:

(1) The rights of interment in the plot may be disposed of by specific bequest in a will, subject to the vested right of interment of the surviving spouse, but not by residuary clause. The specific bequest must mention the section, the lot and grave number of the plot.

(2) If the owner of the certificate of burial right shall have filed notarized instructions at the cemetery office as to which member or members of his/her family shall succeed to the privileges (rights) of the plot, said instructions shall be recognized by the Commissioner and will be followed if in the judgment of the Commissioner such instructions are definite, reasonable and practicable, subject, however, to a vested right of interment of the surviving spouse.

(3) If no valid or sufficient written instructions shall have been filed with the Commissioner, or if valid and sufficient instructions are in conflict with a later will, and the owner of the certificate of burial right has left instructions in said will, duly admitted to probate in a court having jurisdiction thereof, subject, however, to a vested right of

interment of a surviving spouse, such instructions shall control, provided they are not in conflict with cemetery rules and regulations then in force and providing the Commissioner has been furnished with a certified copy of the same.

(4) In the absence of valid and sufficient instructions filed with the commissioner by the owner of the certificate of burial right or a duly probated will, the privileges (rights) of interment shall devolve upon those entitled to succeed thereto by the intestate laws of the State of New York keeping in mind the vested right of interment of the surviving spouse or surviving domestic partner.

(d) Where the certificate of burial right is registered with the Commissioner in the name of more than one person the privileges (rights) of the interment follow as above for the deceased co-owners.

(e) When no one included in the classification set forth above is living, burial rights will have terminated.

(f) Any person acquiring the privileges (rights) of a plot holder by inheritance must also accept any and all liabilities associated with the plot, including, in the case of a plot covered by annual care, any arrearages and all future annual care charges.

(g) Notwithstanding the above provisions of this section, it shall be the obligation of the supervising spouse or surviving domestic partner and/or heirs to claim ownership of a burial right upon the death of a plot holder. In the event that the commissioner is not notified in writing of a claim to a burial right within five years of the death of the plot holder, such burial right shall terminate with respect to any empty grave covered by the deceased plot holder's certificate of burial.

(h) Any person(s) claiming inheritance of a burial right must furnish the Commissioner a copy of the will of the deceased plot holder duly certified by the court in which the will was admitted to probate. In the event that the deceased plot holder left no will, the claimant(s) must furnish to the Commissioner a notarized affidavit from the executor of the decedent's estate stating that the claimant(s) is (are) the beneficiary(ies) of the burial right or other proof of inheritance satisfactory to the Commissioner in his sole discretion. Additionally, all claims must be documented on the cemetery's official claim of inheritance of right of burial form.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (c) par (4) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (g) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Rules of the City of New York

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

55 RCNY 7-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-08 Transfer of Burial Right.

(a) No burial right may be sold, transferred, exchanged, or otherwise disposed of without the written consent of the Commissioner on the cemetery's official transfer of right of burial form.

(b) No burial right with respect to a grave in which an interment has been made may be sold, transferred, exchanged, or otherwise disposed of, except to a family member.

(c) If a plot holder wishes to sell, transfer, exchange or otherwise dispose of to a person other than a family member a burial right with respect to an empty grave, the cemetery may, at the option of the Commissioner, repurchase the burial right for the price originally paid by the plot holder, less any outstanding charges due the cemetery by the plot holder.

(d) No burial right may be sold, transferred, exchanged or otherwise disposed of so long as there are any outstanding charges due the cemetery by the plot holder with respect to the burial right in question or any other burial right held by the plot holder.

(e) No sale, transfer, exchange, or other disposition of a burial right in a plot covered by annual care will be permitted unless the transferee purchases a perpetual care contract for the plot.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-09

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-09 Visitors and Others.

(a) All persons disturbing the quiet and good order of the cemetery by noise or other improper conduct will be compelled instantly to leave the grounds. cemetery personnel will exclude from cemetery grounds any persons it deems improper and will disperse any improper assemblages in the cemetery.

(b) The cemetery gates will be open seven days a week from 8:30 a.m. to 4:00 p.m.

(c) No children under the age of 18 will be admitted unless accompanied by an adult.

(d) No truck, cart or business wagon will be allowed to enter the gates, unless on business.

(e) Admittance will not be granted to persons on bicycles.

(f) All persons are strictly forbidden to pluck or carry flowers, either wild or cultivated, out of the cemetery without written permit from the office.

(g) All solicitations of any kind whatever are strictly prohibited on the cemetery grounds.

(h) No money shall be paid to any person in the employ of the cemetery in reward for any personal service or attention.

(i) Motor vehicles shall be admitted only on permit from the cemetery office. The speed limit for vehicles within the cemetery grounds is fifteen miles per hour. Vehicles shall not park or come to a full stop in front of any open grave

unless they are in attendance at a funeral.

(j) Dogs brought into the cemetery must be kept on leash.

(k) No firearms or guns of any kind shall be brought into the cemetery except with the express permission of the superintendent.

(l) The superintendent reserves the right to compel any person or persons lawfully upon a plot, to temporarily withdraw from same whenever, in the judgment of the superintendent, their presence would interfere with the orderly conduct of funeral services upon a plot in the near vicinity.

(m) No person or persons, other than cemetery employees, shall be permitted to bring food or refreshments into the cemetery grounds.

(n) All workers while on the cemetery grounds shall be subject to the orders of the superintendent of the cemetery. They shall immediately cease work when he/she so orders them to do so, if, in his/her opinion, the carrying on of the work would interfere with the orderly conduct of a funeral service or an interment.

(o) Except when necessary to cross another plot to reach the plot being visited, all persons within the cemetery grounds shall use only the roads, avenues, walks and paths established and maintained by the cemetery.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 7-10

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-10 Prices and Fees.

(a) The prices for burial rights and fees for services are listed in §3-01 of this title.

(b) All payments are to be made by check or money order payable to Canarsie Cemetery and sent to the Division of Real Estate Services, 1 Centre Street, Room 1900, New York, NY 10007.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 7-11

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 7 CANARSIE CEMETERY RULES AND REGULATIONS

§7-11 Miscellaneous.

(a) The statements or representations of any employee of the cemetery shall not be binding on the cemetery except as such statements or representations coincide with the instrument granting burial right and with this chapter.

(b) This chapter shall apply to any grave, plot, memorial, or mausoleum now in existence or which may hereafter be erected in the cemetery.

(c) In all matters not specifically covered by these Rules and Regulations the Commissioner reserves the right to do anything which in his/her judgment is deemed reasonable under the circumstances and such decision shall be binding upon the plot holder and all parties concerned.

HISTORICAL NOTE

Section in original publication July 1, 1991.

30 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-01 Purpose.

New York City's Recycling Law, which is codified as §16-301 et seq of the Administrative Code of the City of New York encourages the use of "secondary materials" in the manufacture of products purchased by DMSS for use by various city agencies and departments. A mechanism authorized by the Recycling Law to achieve the goal of purchasing products made from secondary materials is the authority to award a contract pursuant to a "price preference." Simply stated, the City is given the discretion to determine that the public interest will be served by awarding contracts for the purchase of specified products to other than the lowest responsive and responsible bidder provided that the product contains a mandated "minimum amount of secondary material" and that the price is within the specified percentage of the price bid by the lowest responsive and responsible bidder.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

Rules of the City of New York

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

55 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-02 Definitions.

Aggregate product purchase. "Aggregate product purchase" shall mean a procurement of products by DMSS which consists of a group or groups of products which are related to each other in one of the following ways:

(1) The products are manufactured by a single manufacturer and are purchased in the form of a price list which is a listing of items and their prices;

(2) The products are contained in a published catalog which is offered to DMSS at prices listed in the catalog or at a discount therefrom; or

(3) The products have been combined in a class for award to a single vendor based upon fiscal, operational or pricing advantages.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Citywide Administrative Services of the City of New York, or his or her designee.

Contract. "Contract" means a procurement by DMSS to purchase goods, the total value of which is in excess of $10,000 (or such other amount as the Procurement Policy Board Rules may hereafter establish as the ceiling below which the procurement is treated as a small purchase).

DMSS. "DMSS" means the Division of Municipal Supply Services of the Department of Citywide Administrative Services.

Minimum amount of secondary material. "Minimum amount of secondary material" means the secondary material content level established by these Rules as the minimum percentage required for a product to potentially qualify for a price preference in accordance with Administrative Code §16-322.

Post-consumer material. "Post-consumer material" means only those products generated by a business or a consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling and disposition.

Procurement Policy Board Rules. "Procurement Policy Board Rules" means the regulations originally effective September 1, 1990 governing contracting by city agencies which are promulgated by the Procurement Policy Board of the City of New York as those rules may, from time to time, be amended.

Secondary material. "Secondary material" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies, but such term does not include those materials and by-products generated from and commonly reused within an original manufacturing process.

USEPA. "USEPA" means the United States Environmental Protection Agency.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

Rules of the City of New York

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

55 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-03 Minimum Content Standards and Applicability of Price Preference.

(a) **Applicability of price preference.** In general, on a contract let by DMSS for the purchase of a product, a bidder shall be eligible for the price preference set forth in §16-322 of the Administrative Code for such product only if such bidder offers to supply such product manufactured with the minimum content of secondary material specified in these Rules.

(b) **Minimum content standards incorporated.** DMSS shall utilize the minimum content standards for secondary materials contained in the tables in subdivision (g) of this section to determine eligibility for the price preference set forth in §16-322 of the Administrative Code, provided, however, that, except as provided in subdivision (c) of this section, DMSS shall utilize all minimum content standards for secondary materials subsequently promulgated or amended by either USEPA or the New York State Department of Environmental Conservation (DEC), and if there is a conflict between USEPA and DEC standards, DMSS shall utilize the highest standard that it is permitted to utilize by §16-322 of the Administrative Code.

(c) **Minimum content standards for aggregate product purchases, multi-material products, and metals.** Except as provided by §16-322, notwithstanding any other provision of this section, the minimum content standard for the following products shall be zero:

(1) any product which DMSS purchases by means of an aggregate product purchase, except where such aggregate product purchase consists solely of products that are substantially manufactured from the same material, and for which

the same minimum content standard applies or identical numerical minimum content standards apply;

(2) any product that is not substantially manufactured from a single material; and

(3) metal products.

(d) **Recycled product purchases.** DMSS may restrict bids solely to products composed of specified minimum secondary material content levels. If the minimum secondary material content level specified by DMSS for such a bid is less than the minimum secondary material content standard for such product set forth in these Rules, a bidder may be eligible for a price preference if such bidder offers to provide such product with a level of secondary material content that is equal to or greater than the minimum content standard specified in these Rules.

(e) **Market stimulus bids.** Except for products for which DMSS is required to utilize a USEPA minimum content standard for secondary materials pursuant to Administrative Code §16-322, DMSS may stipulate that for a specific bid a price preference shall only be applicable to products which satisfy additional minimum content standards or higher minimum content standards than those set forth in these Rules, provided that DMSS first finds that such additional or higher standards are intended to stimulate the market for secondary materials.

(f) **Packaging.** Notwithstanding any other provision of this section, this section does not apply to packaging incidental to the product being purchased.

(g) **Tables.**

[See tabular material in printed version]

1. This table has been taken from 40 CFR §250.21. All terms in this USEPA standard are as defined in the regulations heretofore adopted by the USEPA, pursuant to 42 USC §6901 for paper products. The definitions for such terms are found at 40 CFR §250.4.

2. Waste paper is defined in §250.4 and refers to specified postconsumer and other recovered materials.

3. [US]EPA found insufficient production of these papers with recycled content to assure adequate competition.

(2) Additional Standards for Paper

Product	Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by weight of Post- Consumer Material Content
Paper for High Speed Copiers	50 percent	10 percent
Form bond including computer paper and carbonless	50 percent	10 percent

(3) Printing Contracts

The price preference is applicable solely to the paper portion of any printing contract. For purposes of establishing the size of the price preference, the paper portion of printing contracts shall be deemed to be 50 percent of the bid price. The minimum content standard for preference eligibility for the paper shall be that established for the type of paper specified in the Request for Bids.

[See tabular material in printed version]

Lubricating Oils[5]

For engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils, the minimum re-refined oil content shall be not less than 25 percent re-refined oil.

Plastics[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	15 percent

Note-The minimum content standards are based on the weight of material (not volume) in the insulating core only.

4. This Table has been taken from 40 CFR §248.21(a)(4). All terms used in this standard are as defined in the regulations heretofore adopted by the USEPA, pursuant to 42 USC §6901 for building insulation products. The definitions for such terms are found at 40 CFR §248.4.

5. The source for this standard is found at 40 CFR §252.21(a)(12). Definitions for same are located at 40 CFR §252.4.

6. These standards have been derived from Table 1 located at 6 NYCRR §368.4(a). The definitions for the terms used in these standards may be found at 6 NYCRR §368.2.

Glass[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	35 percent

Rubber[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
50 percent	25 percent

Solvents[6]

Minimum Percentage by Weight of Secondary Material Content	Minimum Percentage by Weight of Post-Consumer Material Content
75 percent	75 percent

6. These standards have been derived from Table 1 located at 6 NYCRR §368.4(a). The definitions for the terms used in these standards may be found at 6 NYCRR §368.2.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

Rules of the City of New York

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

55 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-04 Implementation Procedure.

(a) To be eligible for a price preference, bidders must submit with their bids a written certification of the secondary material and post-consumer material content of such product.

(b) In the event that a bidder offers a product which at the time of bid submission is authorized by DEC, pursuant to 6 NYCRR Part 368 **et seq,** to use the New York State "Recycled" emblem in connection with the sale of such product in New York State, then such product shall be deemed to meet the standards for minimum secondary material content pursuant to these Rules, and the bidder, in lieu of the certification required by §8-04(a) above, may submit with its bid a copy of the DEC letter to the manufacturer authorizing the use of the "Recycled" emblem in connection with the sale of the particular product.

HISTORICAL NOTE

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Rules of the City of New York

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

55 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-05 Miscellaneous.

(a) DMSS' specifications will encourage:

(1) the offering of products made with secondary materials;

(2) the offering of products manufactured with remanufactured components;

(3) the offering of products which are capable of utilizing products made with secondary materials or components that are remanufactured.

(b) DMSS will work with other government agencies and purchase from their existing contracts for products made with secondary materials or join with them in the cooperative purchase of such products.

(c) Requests for bids for aggregate product purchases and multi-material products will require that vendors identify products which are made wholly or partially with secondary materials. As appropriate, based upon considerations which include the amount of secondary material content and the volume of purchases by the City, such products may be separately bid or bid as a recycled product purchase or as a market stimulus bid.

(d) DMSS will encourage agencies wherever practicable to purchase retreaded tires from the DMSS requirements contract for such retreaded tires.

(e) DMSS will encourage agencies wherever practicable to purchase products made from post-consumer and other secondary materials.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

35 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 8 CONTRACTS FOR THE PURCHASE OF PRODUCTS CONTAINING SECONDARY MATERIAL AND MINIMUM SECONDARY MATERIAL CONTENT STANDARDS FOR THE PURCHASE OF ESTABLISHING PRICE PREFERENCE ELIGIBILITY

§8-06 Separability.

If any provision or section of these Rules, or the application thereof to particular persons is held invalid, the remainder of these Rules, and their application to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

HISTORICAL NOTE

Section added City Record Oct. 23, 1992 eff. Nov. 22, 1992.

Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-01 [Application.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

Section amended City Record Jan. 19, 2000 §1, eff. Feb. 18, 2000. [See Chapter 9 footnote]

Section added City Record June 16, 1999 eff. July 16, 1999. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. City Record Apr. 19, 2000 §1, eff. May 19, 2000. Chapter was replaced by new Chapter 10. Chapter 9 amended City Record Jan. 19, 2000 §1, eff. Feb. 18, 2000, See Note 2. Chapter 9 added City Record June 16, 1999 eff. July 16, 1999, See Note 1.

NOTE 1. Statement of Basis and Purpose in City Record June 16, 1999: City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

The use of the City Hall steps and sidewalk fronting City Hall for expressive activity must be considered in light of the significant governmental interest in providing for the safety and security of City Hall, the Mayor, other elected officials, people participating in public proceedings held at City Hall and other members of the public. Protecting the safety and security of the public and City Hall is the responsibility of the Police Department.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public, the Mayor, members of the City Council and other elected officials.

After consideration of public and agency comments received and pursuant to §1043(d) of the Charter, the Department of Citywide Administrative Services has revised the rule to address comments which indicated confusion concerning the permit process for applications filed less than 2 business days prior to an event. To address such comments, subdivision b of §9-06 has been modified to indicate clearly that permit applications may be filed within 2 business days of a proposed event.

2. Statement of Basis and Purpose in City Record Jan. 19, 2000: City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-02 [Covered activities exceptions; monthly list of events.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-03 [Conduct; maximum number; larger groups.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-04 [Alternative locations; covered activities not permitted.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-05 [Disorderly conduct; conduct not permitted.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-06 [Permit system; administration.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-07 [Revocation of permit.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY 9-08 [Police

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-08 [Police Department powers not restricted; searches.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-09 [Emergency; close area.] [Repealed]

HISTORICAL NOTE

Section repealed City Record July 13, 2000 §1, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section repealed City Record Apr. 19, 2000 §1, eff. May 19, 2000. [See Chapter 10 footnote]

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 9*1 PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§9-10 [Contents of permit.] [Repealed]

HISTORICAL NOTE

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Rules of the City of New York

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

55 RCNY

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-01 [Application.]

These procedures apply to press conferences, demonstrations, picketing, speechmaking, vigils and like forms of expressive conduct by participants or onlookers ("covered activities") on the steps, sidewalk and plaza area fronting City Hall. The "plaza area" consists of the1 bluestone-paved area bordered on the north by the sidewalk fronting City Hall, on the south by City Hall Park and to the east and west by cobblestone parking areas.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-01.

CASE NOTES

¶ 1. A group provided housing services and advocacy on behalf of New York City residents who are HIV positive or have AIDS, challenged a permit which allowed it to stage a demonstration in City Hall Plaza but prohibited the use

of sound amplification devices. The court held that the City had statutory authority to ban sound amplification devices in demonstrations held in City Hall Plaza. However, the court held that the ban was unconstitutional under the First Amendment. The court said that in order to be valid, any regulation of speech had to be content neutral, and that the standards used for granting exceptions to the ban gave City officials impermissibly wide discretion, and thus were not content neutral. Housing Works v. Kerik, N.Y.L.J., Nov. 30, 2000, page 39, col. 1 (U.S. Dist. Ct, S.D.N.Y.).

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Note 2] Chapter added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Note 1]

NOTE 1.Statement of Basis and Purpose in City Record Apr. 19, 2000: This emergency rule is promulgated pursuant to the authority of the Commissioner of the Department of Citywide Administrative Services under §§1043, 811, 822(a) of the New York City Charter. City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

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FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules governing activities in the immediate vicinity of City Hall is necessary to prevent an immediate threat to health, safety and property, that is, to the security of City Hall, elected officials, persons participating at public proceedings held at City Hall and other members of the public. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

The protection of security at City Hall is of vital importance to the public, as City Hall is the seat of municipal government and houses the operations of the Mayor, the City Council and other public employees. Likewise, City Hall is a significant location for those who seek to exercise their First Amendment rights and to petition their elected representatives. A duly promulgated permitting system for expressive activity in the immediate vicinity of City Hall was recently stayed by order of the federal district court. In the absence of a permitting system, the Police Department is unduly hampered in its ability to adequately protect City Hall, elected officials, members of the public and those who seek to participate in expressive activity in the area of City Hall. Pending the adoption of new rules in accordance with standard procedures of the City Administrative Procedures Act, it is necessary that the Police Department have in place procedures so that it may accept and act on permit applications for the use of the steps, sidewalk and plaza of City Hall for First Amendment activities. Therefore, at the Police Department's request, adoption of these new emergency rules is necessary to ensure that

such procedures are in place, and to protect against immediate threat to the safety and security of the seat of municipal government.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule enabling the Police Department to adequately protect the safety and security of City Hall is necessary to address an immediate threat to health, safety and property. 2. Statement of Basis and Purpose in City Record July 13, 2000: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Citywide Administrative Services under §§1043, 811, 822(a) of the New York City Charter. City Hall is the site of many important government functions. People visit City Hall to call at the offices of their elected representatives, to observe and participate in public proceedings of the City Council, the City Planning Commission and other bodies, and to address their elected representatives. Officeholders and candidates for public office use the City Hall area for press conferences and similar events. City Hall is a significant historical site which draws visitors, and school children tour City Hall to learn about City government. In addition, people seek to express their views to elected officials and others by engaging in public assemblies or demonstrations in the City Hall area.

The use of the City Hall steps, sidewalk and plaza for expressive activity must be considered in light of the significant governmental interest in providing for the safety and security of City Hall, the Mayor, other elected officials, people participating in public proceedings held at City Hall and other members of the Public. Protecting the safety and security of the public and City Hall is the responsibility of the Police Department.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public, the Mayor, members of the City Council and other elected officials.

Rules of the City of New York

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

55 RCNY 10-02 [Activities

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-02 [Activities Not Covered.]

Covered activities shall not include the following public ceremonies and commemorations: (i) inaugurations; (ii) award ceremonies for city employees; and (iii) ceremonies held in conjunction with a City-sponsored ticker-tape parade.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-02.

Rules of the City of New York

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

55 RCNY 10-03 [Conduct,

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-03 [Conduct, Maximum Number; Larger Groups.]

Covered activities shall be conducted in accordance with these requirements and under the terms of permits issued by the Police Department pursuant to §10-06 below. Covered activities shall be conducted in a manner which does not endanger the safety or security of public employees and members of the general public, impede ingress to or egress from City Hall, or interfere with the rights of other persons engaged in covered activities. A maximum of 300 persons in total shall be permitted on the City Hall steps, sidewalk and plaza fronting City Hall for a three-hour time period in an area selected by the Police Department which reasonably accommodates groups of 300 or less. Groups of over 300 persons or who seek to hold a covered activity that exceeds three hours in duration shall be directed to obtain a permit for the use of City Hall Park or other comparable area in accordance with the rules of the Department of Parks and Recreation.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-03.

Rules of the City of New York

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

55 RCNY 10-04 [Alternative

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-04 [Alternative Locations; Covered Activities Not Permitted.]

Covered activities shall not be permitted when the Police Department determines that the covered activity would violate the provisions of §10-05, or under the circumstances set forth in subdivision c of §10-06. When areas of the steps, sidewalk or plaza area fronting City Hall are not available due to events enumerated in §10-02, anticipated security needs or the presence of other groups engaged in covered activities, groups shall be informed of alternative locations or times that are available for the covered activities.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-04.

Rules of the City of New York

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

55 RCNY 10-05 [Disorderly

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-05 [Disorderly Conduct; Conduct Not Permitted.]

Disorderly conduct or conduct which obstructs the usual use of City Hall entrances, foyers, and the parking area, which otherwise impedes public employees in the performance of their official duties, vehicular and pedestrian traffic around City Hall, or the general public from obtaining government services or attending proceedings at City Hall is prohibited. Conduct shall not be permitted which (a) reasonably presents a clear and present danger to the public safety, good order or health; (b) interferes with ingress to or egress from City Hall; or (c) may result in bodily harm to any individual, damage to property, or imminent breach of the peace such that good order cannot otherwise be maintained.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-05.

55 RCNY 10-06 [Permit

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-06 [Permit System; Administration.]

These procedures shall be administered by the Police Department, on behalf of the Department of Citywide Administrative Services and the Department of Parks and Recreation. In administering these procedures, the following permit system will apply:

a. Applicants shall submit fully executed permit applications in a form prescribed by the Police Department to a designated office or division of the Police Department, which will process applications in the order they are received. In the event that multiple applications are received for the same time period, permits will be considered in the order of receipt of fully executed applications.

b. Applications shall be granted or denied within 10 business days of the Police Department's receipt of the application. Applications filed within 10 business days of a proposed covered activity shall be processed as expeditiously as possible. In the case of applications made two business days or less before the proposed covered activity and in the absence of exigent circumstances which prevented the applicant from earlier seeking a permit, the application may be denied where the size or nature of the activity reasonably requires an additional police presence and there is insufficient time to make such presence available. In this event, the applicant will be informed of alternative locations or times for the covered activity.

c. Permits may be denied on the following grounds:

(i) A permit has previously been granted to another applicant for a covered activity for the date and time requested.

(ii) It reasonably appears that the covered activity will present a clear and present danger to the public safety, good order or health.

(iii) The application proposes activities which would be in violation of law or regulation.

(iv) An event enumerated in §10-02 was previously calendared for the same date and time.

(v) The Police Department determines that the proposed covered activity conflicts with security needs anticipated for the time and place of the proposed activity.

In the event that a permit is denied under paragraphs (i), (iv) or (v), the applicant will be informed of alternative locations or times available for the covered activity.

d. Covered activities are subject to the following additional limitations:

(i) Applicants for permits that are issued in error because an event enumerated in §10-02 had previously been calendared or a permit had previously been granted for another covered activity will be notified and provided with a reasonable opportunity to conduct the covered activity at an alternative location or an alternative time.

(ii) No permit will authorize the erection or placement of structures.

(iii) Permits shall authorize only one covered activity by one permit holder at a time.

(iv) Permits shall extend for a period of not more than three hours.

e. Permits may be revoked prior to the scheduled covered activity under the following circumstances: (i) unanticipated security needs or other exigent circumstances; or (ii) information comes to the attention of the Police Department which indicates that the proposed activity reasonably presents a clear and present danger to the public safety, good order or health. Revocations of previously granted permits which occur at least 10 days prior to the covered activity shall be made in writing.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter

10 footnote]

DERIVATION

Section derived from former T55 §9-06.

55 RCNY 10-07 [Revocation of

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-07 [Revocation of Permit.]

During the conduct of covered activities, a permit may be revoked by the ranking on-site New York City police officer if the covered activity or other circumstances (i) present a clear and present danger to the public safety, good order or health; (ii) interfere with ingress to or egress from City Hall or otherwise violate the terms and conditions contained in the permit; or (iii) result in bodily harm to any individual, damage to property, or imminent breach of the peace such that good order cannot otherwise be maintained.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-07.

Rules of the City of New York

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

55 RCNY 10-08 [Police

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-08 [Police Department Powers Not Restricted; Searches.]

Nothing in these procedures shall restrict the power and authority of the Police Department to preserve the public peace and safety in the vicinity of City Hall, including but not limited to using magnetometers or other security devices, submitting all persons, bags and packages to mechanical inspection or search.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter

10 footnote]

DERIVATION

Section derived from former T55 §9-08.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Even though the statute does not contain an express provision regarding sound amplification devices, the Police Department's broad statutory authority to preserve public peace and safety in the vicinity of City Hall gives it the authority to regulate sound amplification devices. The court agreed that City Hall was a public forum which has long

been devoted to assembly and debate. The First Amendment protects the free use of such a public place for rallies of the sort conducted by Housing Works. The protection afforded such use, however is not absolute, because expressive activity, even in a public forum may interfere with other important activities for which the property is used. Thus, even in a public forum, the government may impose reasonable restrictions on the time, place or manner of protected speech, so long as the restrictions are justified without reference to the content of the regulated speech, they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information. However, in order to avoid being struck down as giving government officials overly broad discretion, the regulations must contain narrow, objective and definite standards to guide the licensing authority. The policy here regarding amplified sound in City Hall Plaza, however, does not confer unfettered or unbridled discretion upon City officials. The policy provides that amplified sound may not be used in the City Hall Plaza except for those limited and celebratory occasions when City Hall is closed. The reason for the policy is that the noise level of amplified sound so close to City Hall is a distraction to the executive and legislative officials who work inside the building as well as to the members of the public who have business to transact there. The control of noise is a legitimate public concern. The court did not find the use of the special ticker tape parades, which have occurred only twelve times in the past 20 years, to be equivalent to content-based rules which have banned demonstrations or sound devices. They are designed to celebrate and recognize the kind of accomplishment and achievement that is recognized by all. Thus, the court held that the City's policy banning amplified sound in City Hall Plaza, except for the very occasional ticker-tape parades when City Hall is closed, provide on its face a sufficiently narrow, objective and definite standard to pass the "content neutral" requirement. It also said that the ban on sound devices advances the City's substantial interest in protecting its citizen from unwelcome noise. In terms of the "narrow tailoring" requirement, the evidence showed that only a complete ban would work and it was too difficult to try to regulate the decibel level once sound amp equipment was used. There were alternative areas of communication because there were many other areas in the City where sound amplification was permitted, including City Hall Park, adjacent to and south of the plaza. If Housing Works believes that it really has to be right in front of City Hall to convey its message, it can still do so, provided it does without sound amplification devices. Housing Works v. Kerik, 283 F.3d 471 (2d Cir. 2002).

Rules of the City of New York

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

55 RCNY 10-09 [Emergency;

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-09 [Emergency; Close Area.]

The Police Department may order the closure of or limit access to the City Hall area in the event of an emergency or period of heightened security.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-09.

55 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 10-10 [Contents of

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 10* RULES FOR PRESS CONFERENCES, DEMONSTRATIONS AND SIMILAR ACTIVITIES IN THE IMMEDIATE VICINITY OF CITY HALL

§10-10 [Contents of Permit.]

All permits issued shall include the conditions set forth above.

HISTORICAL NOTE

Section added City Record July 13, 2000 §2, eff. Aug. 12, 2000. [See Chapter 10 footnote]

Section added (as an emergency rule) City Record Apr. 19, 2000 §2, eff. May 19, 2000. [See Chapter 10 footnote]

DERIVATION

Section derived from former T55 §9-10.

Rules of the City of New York

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

55 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-01 General Examination Regulations.

(a) **General provisions.**

(1) These regulations shall be applicable to all examinations conducted by the New York City Department of Citywide Administrative Services for positions in the competitive, non-competitive and labor classes. Before applying to take an examination, applicants should consult the Notice of Examination for the specific position for which they are applying and these General Examination Regulations. Applicants are responsible for knowledge of the contents of those documents, which are binding on all applicants. In addition, the Civil Service Law and the personnel rules and regulations of the City of New York apply to all examinations.

(2) All information concerning an examination, including these regulations, notices of examination, filing dates, test dates, and key answers are posted in the Application Section of the Department of Citywide Administrative Services at 18 Washington Street, N.Y., N.Y. 10004.

(b) **Applications.**

(1) Completed application forms and required fee may be submitted by mail only to the Applications Section of the Department of Citywide Administrative Services, unless otherwise provided in the Notice of Examination. Application forms submitted by mail must be properly stamped and addressed to "Applications Section, New York City Department of Citywide Administrative Services, 18 Washington Street, New York, N.Y. 10004," and must be received by the last date for receipt of applications specified in the Notice of Examinations.

(2) Except on legal holidays and unless otherwise stated in the Notice of Examination, the Applications Section of the Department of Citywide Administrative Services, 18 Washington Street is open from Monday to Friday, from 9 a.m. to 5 p.m. Application forms can be obtained without charge at the Applications Section during the application period specified in the Notice of Examination.

(3) A late application in a promotion examination shall be accepted if submitted by the employing agency personnel office as early as practicable prior to the day of the first test thereof if such late application includes a signed statement from his or her personnel officer that he or she was absent from employment because of vacation, sick leave, military duty, or other reason acceptable to the Department of Citywide Administrative Services, for a period of not less than one-half of the application period.

(4) The Department of Citywide Administrative Services assumes no responsibility for applications where:

(i) errors or mistakes are made therein by the applicant;

(ii) they are filed by mail;

(iii) they are not filed with the Department of Citywide Administrative Services or other agency designated by the Commissioner of Citywide Administrative Services to accept applications; or

(iv) they are not received on a timely basis.

(c) **Application fees.**

(1) An application fee, as required in the notice of examination, must be paid at the time of submitting the application for any civil service appointment and for any application for appointment without competitive examination including provisional and labor class appointments and transfers. The application fee will be based upon the minimum of the salary range of the title being sought:

Salary Category	Fee
Under $30,000	$30
30,000-34,999	$35
35,000-39,999	$40
40,000-44,999	$45
$45,000-49,999	$50
$50,000 & above	$60

(2) An application fee is not required of a New York City resident receiving public assistance from the New York City Department of Social Services. To have the fee waived, such applicant must submit a photocopy of a current Medicaid identification card.

In addition, the application fee may be waived, in the discretion of the Commissioner of Citywide Administrative Services, upon a showing of compelling circumstances.

(3) Unless otherwise required in the Notice of Examination, payment must be made with a money order made payable to the order of the New York City Department of Citywide Administrative Services. Applicants must write their Social Security number and the examination number, for which the application is being submitted, on the money order. Cash or checks will not be accepted, unless specified in the Notice of Examination.

(4) An applicant who was unable to take or complete an examination may apply for refund of the application fee by submitting a written request therefor to the Fiscal Division of the Department of Citywide Administrative Services within 30 days of the date of the first test in the examination at which he or she was unable to appear with verification that such absence was due to:

(i) compulsory attendance before a court or other public body or official having the power to compel attendance;

(ii) hospitalization;

(iii) a clear error or mistake for which the Department of Citywide Administrative Services is responsible.

(5) An applicant who was unable to take the first test in an open competitive examination because of active military service with the armed forces of the United States may apply for refund of the filing fee by submitting written request therefor with verification of such service not later than 60 days from the termination of military duty.

(d) **Test date and admission cards.**

(1) The tentative date of the first assembled test in an examination is stated in the Notice of Examination. The official test date will be given in the admission card sent to the applicant. The City assumes no responsibility for mail delivery. Applicants who do not receive an admission card at least 4 days prior to the tentative test date must appear at the Examining Service Division of the Department of Citywide Administrative Services, 2 Washington Street, 17th Floor, during normal business hours on one of the 4 days preceding the test date to obtain an admission card.

(2) A candidate who is found to be not qualified or not eligible for an examination or for whom the Department of Citywide Administrative Services has no record of receiving an application will not have his/her test scored.

(e) **Change of address.**

(1) A candidate in an examination whose address changes after s/he submits the application but prior to mailing of the notice of results, must promptly notify the Examining Service Division of the Department of Citywide Administrative Services in writing in the manner described in paragraph (3) of this subdivision.

(2) A candidate in an examination whose address changes after mailing of the notice of results and during the life of an eligible list upon which the candidate's name appears shall promptly notify the Certification Section of the Department of Citywide Administrative Services in writing in the manner described in paragraph (3) of this subdivision.

(3) A separate notification of a change of address should be submitted for each examination in which the person is a candidate or an eligible. Each submission must include the candidate's name, Social Security number, complete new address, the title of the examination and the examination number, and place on the eligible list, if applicable. For promotion examinations, include the name of the city agency by which the candidate is employed. Failure to furnish notification of a change of address may result in the loss of opportunity to compete in tests or loss of opportunity to appear for appointment interviews.

(f) **Citizenship.** (1) Any citizenship requirement will be set forth in the Notice of Examination. When citizenship is not required, non-citizens must be able to establish at the time of appointment and throughout the period of their employment that they are legally permitted to work in the United States.

(2) Under the Immigration Reform and Control Act of 1986, each candidate must be able to prove his/her identity and his/her right to obtain employment in the United States prior to employment with the City of New York.

(g) **Age.** Persons who have not reached their eighteenth birthday shall obtain employment certificates as required by law before appointment.

(h) **Residency.** §§12-120 and 12-121 of the Administrative Code of the City of New York require that any person who enters City service on or after September 1, 1986 shall be a resident of the City within 90 days after the date he or she enters City service and shall thereafter maintain city residence as a condition of employment. The Commissioner of Citywide Administrative Services may waive this requirement for positions which are hard to fill. In addition, certain positions are exempted by law.

(i) **Language.** Candidates must be able to understand and be understood in English. A qualifying English language oral will be given by the Department of Citywide Administrative Services to all candidates who, in the opinion of the appointing officer, do not meet this requirement.

(j) **Special testing services for disabled applicants.** (1) Any applicant who is disabled to the extent that he or she requires special accommodations to take an examination shall submit a written request for such accommodations, together with proof of disability as described below, to the Examining Service Section of the Department of Citywide Administrative Services, 2 Washington Street, N.Y., N.Y. 10004, postmarked no later than 30 working days before the date of the examination. The written request must indicate the specific accommodation requested, and any alternative which would be equally acceptable. Where appropriate and practicable, the Department of Citywide Administrative Services will provide one or more forms of testing accommodations, such as providing an accessible or alternate examination site, additional time to complete the examination, special seating, full written instructions and special attention from the monitor to insure that the applicant has understood oral instructions, a reader or tape recorder for test questions, an amanuensis or tape recorder for test answers, and large print or braille.

(2) Where the disability involves vision, the applicant shall submit:

(i) proof of registration with the New York State Commission for the Blind and Visually Handicapped, or

(ii) proof that corrected total vision is less than 20/200 or that the applicant's field of vision is less than 20 degrees.

(3) Where the disability involves hearing, the applicant shall submit an audiogram taken within the past year by an audiologist licensed in New York State or board certified otologist, indicating registration number, and showing the level of hearing loss.

(4) Where the applicant's disability does not come within the categories described in paragraphs (2) or (3) of this subdivision and the applicant nevertheless requires special accommodations to take the examination because of his or her disability, the applicant shall submit either a doctor's note or proof of disability from an agency or organization which is recognized as one which specializes in serving persons with the applicant's type of disability. The substantiating document shall indicate the extent of the disability and the specific testing accommodations recommended for the applicant.

(5) For the purpose of these regulations, "an agency or organization which is recognized as one which specializes in serving persons with (certain disabilities)" means a government agency (such as the New York State Office of Vocational Rehabilitation) or a private organization or agency (such as United Cerebral Palsy) which is known to the Department of Citywide Administrative Services or the Mayor's Office for People with Disabilities for its work. The substantiating document must be on letterhead and must bear the signature and title of the person certifying the applicant's disability.

(6) Disabled applicants may take steps to personally accommodate their special testing needs in the following ways:

(i) Applicants may use their own impairment-related aids, such as magnifying glasses or talking calculators with ear plugs (where all other applicants are permitted to use calculators), during the examination.

(ii) An applicant who requires an amanuensis or reader with special skills or abilities not provided by the

Department of Citywide Administrative Services may submit proof of special need from an agency or organization which is recognized as one which specializes in serving persons with the candidate's type of disability and which further has volunteers available to perform the requested service. The agency or organization must notify the Department of Citywide Administrative Services no later than 15 work days before the test date that it will provide a volunteer. The Department of Citywide Administrative Services will not be responsible for providing a replacement amanuensis or reader in the event a volunteer fails to appear on the day of the examination.

(k) **Special examinations.** (1) An applicant who is unable, for any of the reasons listed below, to take the regular examination as scheduled may be given a special examination upon written request. Such applicant must submit a written request setting forth the reasons requiring the absence and providing documentary evidence which demonstrates to the satisfaction of the Commissioner of Citywide Administrative Services that the applicant was unable to take the regular examination as scheduled. Unless otherwise specified herein, such material must be submitted to the Examining Service Section either in person or by certified or registered mail no later than one week following close of the application period. If one of the following circumstances arises after that date, such documentation must be received within one week following the occurrence, but no later than one week before the special test.

(2) **Religious observance.** An applicant claiming to be unable to take an examination when originally scheduled because of his or her religious beliefs may request a special examination by submitting either in person or by certified or registered mail to the Examining Services Division of the Department of Citywide Administrative Services, a written request no later than 15 days before the scheduled date of the regular examination. The request must include a recent written statement on letterhead signed by the applicant's religious leader attesting to the applicant's religious beliefs and certifying that the applicant is a Sabbath observer and that it is contrary to the applicant's tenets to participate in an examination on the date the regular test is scheduled.

(3) **Military service.** (i) §243: An applicant who has taken the first test:

(A) in an open competitive examination but is unable to complete the remaining test because of military duty as defined in §243 of the New York Military Law must apply to the Control and Service Division of the Department of Citywide Administrative Services with his or her separation papers not later than 90 days from the termination of such military duty;

(B) in a promotion examination, who is unable to take or complete such examination because of military duty as defined in §243 of the New York Military Law, must apply to the Control and Service Division of the Department of Citywide Administrative Services with his or her separation papers not later than 60 days from the date of restoration to his or her City position.

(ii) §242: An applicant in a multiple choice promotion examination who is ordered to appear for military duty on the scheduled test date must notify the Examining Service Section in writing no later than one week from the close of the application period. To be admitted to the make-up test scheduled in the Notice of Examination, such applicant must provide by certified or registered mail, written documentation on letterhead signed by the commanding officer stating that such duty cannot be rescheduled to permit the applicant to participate in the test and setting forth the reasons why. Such documentation must be received by the Examining Service Section no later than 10 working days prior to the regular test date. Such applicants who do not follow the above procedures must apply for a special test under the procedures in paragraph (3)(i)(B) of this subdivision.

(4) **Other reasons:**

(i) a manifest error or mistake for which the Department of Citywide Administrative Services or the examining agency is responsible; or

(ii) compulsory attendance before a court or other public body or official having the power to compel attendance; or

(iii) physical disability incurred during the course of and within the scope of municipal employment where such applicant is an officer or employee of the City; or

(iv) absence from the test within one week after the date of death of a spouse, domestic partner, mother, father, sister, brother, child or child of a domestic partner of such applicant where such applicant is an officer or employee of the City; (For purposes of this subparagraph, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel are to be transferred to the City Clerk.))

(l) **Education and experience credit.** (1) To be credited, the education and experience must be of the nature, duration and quality described in the notice of examination and must have occurred during the prescribed period of time. Unless otherwise specified in the Notice of Examination, all requirements must be met by the last date of the application period.

(2) All education and experience must be clearly specified on the experience paper in order to be credited or considered on appeal. Education and experience listed on the experience paper will receive credit only to the extent that it is described clearly and in detail. A maximum of one year of experience will be credited for each 12 month period. Part-time experience will be pro-rated and credited in lieu of, but not in addition to full time experience during the same period.

(3) If statements of material facts are found to be false, exaggerated or misleading, an applicant may be disqualified.

(4) Where experience is a qualifying test only, experience which falls short by up to one month shall be accepted as qualifying.

(m) **Physical tests.** To be permitted to participate in any physical test candidates must sign the prescribed release form.

(n) **Medical examination.** (1) Any impairment which will adversely affect ability to perform the duties of the position in a reasonable manner, or which may reasonably be expected to render the applicant unfit to continue to perform the duties of the position shall constitute grounds for disqualification.

(2) A candidate medically rejected for a condition which thereafter materially improves may apply for medical reexamination. However, no such candidate will be re-examined following expiration of the eligible list.

(o) **Test administration.** A candidate who fails to follow instructions at the test site will not have his/her test scored.

(p) **Impersonating and cheating.** (1) A person who impersonates another or who allows himself or herself to be impersonated or who otherwise cheats in an examination shall be barred from taking civil service examinations for positions with the City of New York or receiving appointments with the City of New York.

(2) A person barred from city employment pursuant to subdivision (p)(1) of this section may submit a written request to the Commissioner of Citywide Administrative Services for reconsideration of this action, setting forth reasons to substantiate the request.

(q) **Protests.** Candidates may file protests against proposed key answers in accordance with §50-a of the Civil Service Law. Protest procedures and time limits will be described at the time of the test.

(r) **Appeals.** (1) Except as may otherwise be provided by the Commissioner of Citywide Administrative Services and upon payment of applicable fees:

(i) Candidates who wish to appeal a computational error in rating shall file an appeal within 30 days from the date of the notice of results of the examination.

(ii) Candidates who wish to appeal the rating of oral, practical, or essay tests may request a breakdown of their scores and an appointment for review by submitting a written request to the Committee on Manifest Errors within one week following the date of the notice of results of the examination and shall file their completed appeals within 60 days from that date. An appointment for review, i.e. for playback of audio/video recording, inspection of work sample on practical test, or review of answer paper and the key or illustrative answers of essay tests, where available, will be granted prior to the end of the appeal period.

(2) For all oral, practical, or essay tests, such playback, inspection or review shall be limited in duration to a period equivalent to the duration of the test in question. A representative of the Department of Citywide Administrative Services must be present at all times.

(s) **Investigation.** (1) All applicants must be of satisfactory character and reputation and must meet all requirements set forth in the Notice of Examination for the position for which they are applying. Applicants may be summoned for the written test prior to investigation of their qualifications and background. Admission to the test does not mean that the applicant has met the qualifications for the position.

(2) A fee of $50 is required of each candidate to cover the cost of fingerprint processing. Payment shall be submitted to the appointing agency at the time of fingerprinting and shall be in the form of a Travelers Express, American Express or postal money order payable to the "New York State Division of Criminal Justice Services." Cash will not be accepted.

(t) **Probationary terms.** (1) Except as otherwise provided, all appointments and promotions shall be for a probationary term of one year.

(2) Upon showing to the satisfaction of the Commissioner that the services of a probationer have been unsatisfactory, an appointing officer may terminate the employment of such probationer at any time during the probationary term.

(u) **Fees for special services.**Fees for special services furnished upon request shall be as follows:

(1) duplicate result cards-$l per card

(2) breakdown of rating on examination-$5 per copy

(3) photocopies-$l per page

(4) play-back of audio recordings-$5 per play-back

(5) play-back of video recordings-$10 per play-back

(6) other-as may be provided

(v) **Correspondence and address.** All correspondence to the Department of Citywide Administrative Services, Division of Citywide Personnel Services, shall be sent to 2 Washington Street, N.Y., N.Y. 10004, unless otherwise specified.

(w) **Seniority and veterans' credit.** Where seniority or Veterans' Preference credit is claimed, the candidate must

achieve a passing score in order to be eligible for such credit.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-01 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (c) par (1) amended City Record Aug. 23, 1996 eff. Sept. 22, 1996. [See Note 1]

Subd. (c) par (3) amended City Record Aug. 12, 1991 eff. Sept. 11, 1991.

Subd. (k) par (1) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (k) par (4) open par amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

Subd. (k) par (4) subpar (iv) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 23, 1996:

The adopted amendments to the General Examination Regulations and License Examinations of the Department are based upon the City Personnel Director's authority to recruit personnel pursuant to Section 15 and Article IV of the New York State Civil Service Law and to schedule and conduct examinations for positions in the civil service pursuant to section 813a of the New York City Charter. The New York City Charter §1043 provides that each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.

The adopted amendments to Rule §1-01(c) and §1-02(c), providing for the Department to increase application fees to cover some of the expenses incurred for developing and administering civil service examinations and for increasing fees for license examinations, have become necessary due to increasing costs facing City government. The Department can no longer obtain the funds necessary to support many of the services required for the development, administration and rating of these examinations in its proposed budget. Many examinations require extraordinary services necessary to develop, administer and rate since they involve tens of thousands of candidates in different skill levels. Therefore, an increase in application fees is necessary to defray more of the cost of these services.

The additional fees will be used solely to cover some of the Department's costs of developing, administering and rating an examination. When applicable, they will be announced in the Notice of Examination or its amendments.

CASE NOTE FROM FORMER SECTION

¶ 1. Caponigro v. White, 636 N.Y.S.2d 307 (App.Div. 1st Dept. 1996). A challenge to that portion of this section which bars a person who cheats on a civil service examination from receiving appointments or taking future examinations, must be brought as an Article 78 proceeding rather than as a declaratory judgment action, since the rule in question is an administrative regulation rather than a statute. Hence, the four month Article 78 statute of limitations applies even though there is a challenge to the constitutionality of the regulation.

Rules of the City of New York

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

55 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-02 License Examinations.

(a) **Applicability.** These regulations apply to the following licenses:

Climber or Tower Crane Rigger

High Pressure Boiler Operating Engineer

Hoisting Machine Operator

Hoisting Machine Operator (Endorsement)

Master Electrician

Master Fire Suppression Piping Contractor

Master Plumber

Master Rigger

Master Sign Hanger

Motion Picture Operator

Oil Burning Equipment Installer, Class A and Class B

Portable High Pressure Boiler Operating Engineer

Site Safety Manager

Special Electrician

Special Rigger

Special Sign Hanger

Welder

These regulations shall be applicable also to examinations conducted by the Department of Citywide Administrative Services for appointment by the Mayor as a City Surveyor.

These regulations shall not be applicable to examinations for licenses for Refrigerating Machine Operator (Unlimited Capacity) and To Install, Alter, Test and Repair Underground Storage Tanks, to Wit: Gasoline, Diesel Fuel Oil (Used for Operation of Motor Vehicles) and Other Volatile Inflammable Liquids. Such examinations shall be administered by the Fire Department in accordance with §9-01 of Title 3 of the Rules of the City of New York, and applicants who establish their qualifications for such licenses in accordance with the provisions of said section and New York City Administrative Code §§27-4002(8a) and 27-4194(d), as applicable, shall be so certified by the Department of Citywide Administrative Services.

(b) **Applications.** (1) An examination schedule of written tests indicating the last day to file is posted in the Applications Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services, 18 Washington Street, N.Y., N.Y. 10004.

(2) The Department of Citywide Administrative Services assumes no responsibility for applications where errors or mistakes are made therein by the applicant, or for applications not filed with the Department of Citywide Administrative Services, or for applications not received on a timely basis.

(3) Applications submitted must include the correct filing fee. Payment may be made in person or by mail and must be with a money order made payable to Department of Citywide Administrative Services. Applicants must write their social security number and the examination number, for which the application is being submitted, on the front of the money order.

(4) Except for the examination for license for welder, special rigger and special sign hanger, a practical test shall be given only to those candidates who have filed applications at least 20 days (excluding Saturdays, Sundays and legal holidays) before the first test date.

(c) **Filing fees.**

(1) Except as provided in paragraph (2) of this subdivision, the filing fees shall be:

[See tabular material in printed version]

(2) (i) Filing fees shall be waived for a New York City resident receiving public assistance who submits a clear photocopy of a current benefit identification card along with the application.

(ii) For the license examinations for Master Electrician, Master Plumber, Master Rigger, Special Electrician, and Special Rigger, filing fees shall be waived for employees of public agencies doing work solely for their agencies, where

the license is required for work performed in such agencies, and where the agencies request such waiver.

(3) An applicant who is marked not qualified before the date of the first test or who has not passed the required English language test will be refunded, upon application therefor, all but $40 of the filing fee.

(d) **Education, training and experience requirements.** (1) An applicant must possess the minimum education, training and/or experience requirements at the time of filing of the application and must be able to read and write the English language.

A qualifying examination will be given to determine if the applicant is able to read and write the English language for those licenses issued by the Department of Buildings and where the examination given by the Department of Citywide Administrative Services for the license does not contain a written part. Applicants who do not pass this examination will not be permitted to take any other part of the license examination.

Admission to an examination does not imply that the applicant possesses the minimum qualifications required. The burden of proving that the applicant meets the required qualifications shall be upon the applicant.

(2) For licenses other than Master Plumber, Master Rigger and High Pressure Boiler Operating Engineer, the Administrative Code provides that time spent on active duty in the armed forces of the United States during time of war, including service with said armed forces in the Korean or Vietnam conflict, shall be credited as experience on a year-for-year basis provided that:

(i) the applicant is at least 18 years of age, and that

(ii) the applicant has at least 1 year of required experience prior to entry into the armed forces, and that

(iii) such military duty interrupted the continuance of the experience, and

(iv) the applicant received an honorable discharge from the military service.

(3) For the license of High Pressure Boiler Operating Engineer, the Administrative Code provides that an applicant who has served on active duty in the armed forces of the United States during time of war including service with said armed forces in the Korean or Vietnam conflict, and has been honorably discharged shall be deemed to meet the experience requirements if during the 10 years immediately prior to filing the Application For License Examination, the applicant shall have had:

(i) at least 5 years of required experience, or

(ii) at least 1 year of required experience prior to entry into military service and while in such service either served as or performed duties equivalent to those performed by a boilermaker, engineer, fireman, oiler, machinist or water tender to make a total of at least 5 years of required experience.

(e) **Examinations.** (1) For examinations for licenses of special rigger, special sign hanger and welder, the tests shall be scheduled as the receipt of applications warrants. For license examinations other than special rigger, special sign hanger and welder, the test dates are posted in the Application Section.

(2) The official test date will be contained in the admission card sent to the applicant. For license examinations for which the test date has been previously posted in the application section, applicants who filed timely applications and who do not receive an admission card within 7 days prior to the test date must appear prior to the test date at the Examining Service Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services, during normal business hours to obtain an admission card to the examination.

(3) An applicant who was unable to take or complete an examination may apply to take or complete the

examination or request a refund by submitting written request therefor to the Examining Service Section of the Department of Citywide Administrative Services within 60 days of the first test in the license examination at which the applicant was unable to appear with verification that such absence was due to:

(i) compulsory attendance before a court or other body or official having the power to compel attendance; or

(ii) a manifest error or mistake for which the Department of Citywide Administrative Services is responsible; or

(iii) death of a spouse, domestic partner, mother, father, sister, brother, child, or child of a domestic partner of such candidate within one week before the test; (For purposes of this subparagraph, a domestic partner shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of personnel are to be transferred to the City Clerk.)) or

(iv) hospitalization or period of recuperation immediately following hospitalization; or

(v) active military service with the armed forces of the United States.

(4) License examinations may consist of a written test, practical test or oral test or a combination of any such tests.

The questions and answers in all tests for licenses shall not be released or made public.

(5) On a license examination for which there is a numerical rating, a candidate must attain a rating of not less than 70 percent in the examination or in any test, subtest or part thereof.

(6) Where a license examination other than for special rigger, special sign hanger and welder consists of both a written and a practical test, a candidate who has passed the written test but has been notified of failure to pass the practical test may request another practical test.

A total of not more than 3 practical tests shall be allowed a candidate in connection with the written test and a separate application must be made for each practical test requested.

Except as provided in paragraph (3) of this subdivision, applications for the second or third practical tests shall be filed in the Application Section of the Department of Citywide Administrative Services, Division of Citywide Personnel Services not later than 2 years from the date of the written test and shall be accompanied by the required fee. Where a candidate has already taken and passed a written test, the candidate will not be permitted to take a second written test until the candidate has completed all the practical tests to which the candidate is entitled.

(7) For license examinations for Site Safety Manager, Special Rigger, Special Sign Hanger and Welder, a candidate who fails any test or subtest in the examination shall be deemed to have failed the entire examination and no further test or subtest shall be either administered or rated, as the case may be.

However, for license of welder class 1 or welder class 1 restricted or welder class 3, a candidate who fails only one part in the practical test shall be qualified for license of welder class 2 or welder class 2 restricted or welder class 3 restricted, respectively.

(f) **Appeals.** (1) A candidate who has been notified of failure to pass the written or practical license examination may appeal such failure only if the candidate has failed by not more than 5 points. Such appeal must be in writing to the New York City Department of Citywide Administrative Services, 2 Washington Street, 17th Floor, New York, New York, 10004, ATTN: Examining Service Section, stating the title of the license examination, examination number, the application number, and the social security number, and be received not later than 30 days from the date of notification of failure to pass the license examination.

(2) A candidate who has failed the written test in a license examination by not more than 5 points may submit a written request to review the items scored as incorrect and the key answers thereto. Such request with the result card shall be mailed to the New York City Department of Citywide Administrative Services, 2 Washington Street, New York, New York 10004, ATTN: License Examinations, and it must be received no later than 15 days from the date of notification of failure to pass the test.

(g) **Impersonating and cheating.** (1) A person who impersonates another or who allows himself or herself to be impersonated or who otherwise cheats in a license examination shall be disqualified from receiving a license issued by the City of New York or from holding any position with the City of New York.

(2) A person disqualified pursuant to paragraph (1) of this subdivision may submit a written request to the Commissioner of Citywide Administrative Services for reconsideration of this action, setting forth reasons to substantiate the request.

(h) **Investigation.** (1) The Department of Citywide Administrative Services, Division of Citywide Personnel Services or the investigating agency, as the case may be, shall conduct an investigation of each candidate to determine the candidate's fitness and qualification for the license, and may refuse to certify a candidate who does not meet the requirements therefor.

(2) Successful candidates in the examination shall be summoned for investigation by the appropriate investigating agency. Candidates shall be disqualified for the license or certification of qualification if they do not appear for investigation within 4 months of the date for which originally summoned. Such candidates shall then be required to file for and pass a new license examination in order to obtain the license or certification of qualification.

(3) Investigation of candidates shall be conducted by the Department of Citywide Administrative Services except for those licenses where investigation shall be conducted by the agency responsible for the issuance of licenses as indicated below:

(i) **Department of Consumer Affairs**

(i) Motion Picture Operator

(ii) **Department of Buildings**

(ii) Master Electrician

(ii) Special Electrician

The names of successful candidates in the license examinations listed above will be submitted to the appropriate agency by the Department of Citywide Administrative Services.

(4) The names of candidates who have been found qualified after investigation will be transmitted by the Department of Citywide Administrative Services to the agency responsible for the issuance of licenses as indicated below:

Department of Buildings

Climber or Tower Crane Rigger

High Pressure Boiler Operating Engineer

Hoisting Machine Operator

Master Fire Suppression Piping Contractor

Master Plumber

Master Rigger

Master Sign Hanger*1

Oil Burning Equipment Installer

Portable High Pressure Boiler Operating Engineer

Site Safety Manager

Special Rigger

Special Sign Hanger*

Welder

(i) **Change of address.** A candidate in a license examination shall promptly notify the Department of Citywide Administrative Services in writing of any address change which occurs after filing the application for license examination.

A separate notification shall be submitted for each examination for which the person is a candidate. The notification shall include the candidate's name, complete new address, social security number, the title of the license examination, and license examination number.

Failure to furnish such notification shall be at the sole risk of such person and may result in the loss of opportunity to compete in any tests or subtests of the license examination not already held.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-02 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (b) par (3) amended City Record Aug. 12, 1991 eff. Sept. 11, 1991.

Subd. (c) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (c) par (1) amended City Record Aug. 23, 1996 eff. Sept. 22, 1996. [See T55 §11-01 Note 1]

Subd. (d) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

Subd. (e) par (3) subpar (iii) amended City Record Aug. 31, 1998 eff. Sept. 30, 1998. [See T55 §7-01

Note 1]

Subd. (h) amended City Record Jan. 14, 2000 eff. Feb. 15, 2000 per City Record notice. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan 14, 2000:

The Department of Citywide Administrative Services has administered the Refrigerating Machine Operator and Underground Tank Installer examinations in connection with the licensing of these activities by the New York City Fire Department, notwithstanding the fact that the Fire Department administers all of its other licensing examinations and is capable of administering these two examinations. Both departments agree that it would be a more efficient use of resources for the Fire Department to assume administration of the examinations. Such an arrangement would also benefit the affected industries because, among other reasons, the Fire Department could administer the examinations more frequently.

This rulemaking is being conducted in conjunction with the Fire Department's amendment of 3 RCNY §9-01 to (in part) address the administration of these two examinations. The Department of Citywide Administrative Services will continue to certify the results of the Underground Tank Installer examination pending the March 21, 2000 effective date of Local Law No. 68 of 1999, which authorized the Fire Department to administer such examinations. The Department of Citywide Administrative Services will continue to certify the results of the Refrigerating Machine Operator examination pending the enactment of legislation similarly granting such authority to the Fire Department.

FOOTNOTES

1

[Footnote 1]: * Applicants for license examination for Master Sign Hanger and Special Sign Hanger may in the discretion of the Commissioner of Buildings be qualified without taking a license examination but such applicants shall be required to qualify in the investigation.

Rules of the City of New York

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

55 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-03 Adjudications of the Department of Citywide Administrative Services.

(a) Pursuant to the New York City Charter §§1041, 1046-1048, and by designation by the Mayor, the Department of Citywide Administrative Services has determined that adjudications held pursuant to Section 210.2(g) of the Civil Service Law Article 14 ("The Taylor Law") to determine whether an employee has violated the Taylor Law shall be conducted by the Department or a designee of the Commissioner of Citywide Administrative Services. Such designee shall be a Hearing Officer who is authorized in writing by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law. Administrative Law Judges from the Office of Administrative Trials and Hearings ("OATH") may be designated as Hearing Officers authorized by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law.

(b) Disciplinary hearings and disability hearings conducted pursuant to Civil Service Law §§72 and 75 shall be conducted by OATH. In all adjudications conducted by OATH, pursuant to Civil Service Law §§71, 72, 73 and 75, the Administrative Law Judge shall make written proposed findings of fact, conclusions of law, a recommended decision and, where appropriate, a proposed penalty. The Commissioner of Citywide Administrative Services may adopt, reject, or modify any such recommendations.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-03 LL 59/1996 eff. Aug. 8, 1996.

Section amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

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

55 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 11 PERSONNEL PRACTICE AND PROCEDURE

§11-04 Taylor Law Hearings.

(a) All hearings conducted pursuant to §210.2(g) of the New York Civil Service Law shall be subject to the following rules.

(b) **Notice.** All persons who are entitled to a Taylor Law Hearing shall receive a notice that shall contain the following provisions:

(1) a statement of the legal and jurisdictional authority for a hearing;

(2) a statement of the pertinent legal and regulatory sections at issue;

(3) a statement of the employee's right to object to a determination of a Taylor Law violation;

(4) a statement of the nature of the proceeding and the particular matter to be adjudicated;

(5) a statement of the date(s) a Taylor Law violation was committed;

(6) a statement of potential penalties that may be assessed;

(7) a statement that the employee is entitled to representation by counsel or a union representative.

(c) The notice shall be served personally or by certified mail addressed to the last address the employee has filed with his or her agency's personnel office.

(d) Where a hearing is required pursuant to §210.2(g) of the New York Civil Service Law, the employee shall receive further notice of the time and place of the hearing.

(e) **Hearing.** Where an employee requests that a hearing pursuant to §210.2(g) of the New York Civil Service Law, be held, such a hearing shall be held within a reasonable time. The hearing shall be conducted by a Hearing Officer assigned exclusively to perform adjudicative and related duties for the Department of Citywide Administrative Services, or by a designee of the Department who is authorized in writing by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law. Administrative Law Judges from OATH may be designated as Hearing Officers authorized by the Commissioner of Citywide Administrative Services to conduct hearings pursuant to the Taylor Law.

(1) At the hearing, the employee shall be entitled to: be represented by counsel or union representative; call witnesses and cross-examine opposing witnesses; present oral and written arguments on the law and facts; issue subpoenas or request that a subpoena be issued, requiring attendance and the giving of testimony and/or the production of books, papers, documents, and other evidence. The issuance of subpoenas shall be governed by the New York Civil Practice Law and Rules.

(2) Adherence to the formal rules of evidence is not required. Objections may be made to evidence, including testimony, and shall be noted in the record.

(3) There shall be no ex parte communications between a party and the hearing officer.

(4) The hearing shall be transcribed or recorded. Upon request, a copy of the transcript or record, or any part thereof. shall be made available and a copy shall be provided at reasonable cost.

(f) **Burden of proof.** The employee shall bear the burden of proof at the hearing in accordance with Civil Service Law §210.2(g).

(g) **Findings of fact.** In all hearings conducted by the Department or a designee of the Commissioner of Citywide Administrative Services, the Hearing Officer shall make findings of fact and determine whether the employee has established that he or she did not violate Section 210 of the New York Civil Service Law. These findings and the determination shall be in writing and delivered to the Commissioner of Citywide Administrative Services within a reasonable time following the conclusion of the hearing. The Commissioner of Citywide Administrative Services shall then notify the employee of the Hearing Officer's findings and determination.

(h) **Appeals.** The determination of the hearing officer may be appealed by any party by bringing a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §1-04 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Subd. (e) amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

Subd. (g) amended City Record Sept. 28, 1992 eff. Oct. 28, 1992.

Rules of the City of New York

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

55 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-01 Definitions.

Annual solicitation campaign. "Annual solicitation campaign" shall mean the period of organized solicitation of municipal employees conducted annually by the Combined Municipal Campaign to obtain contributions with respect to the ensuing year of contributions.

Charitable non-profit organization. "Charitable non-profit organization" shall mean a private non-profit organization performing charitable services for human health and welfare or recreation, eligible for approval as a coordinating agency, or for membership in the combined Municipal Campaign in accordance with the provisions of these rules.

Combined municipal campaign. "Combined municipal campaign" shall mean the joint campaign of the coordinating agency with one or more other charitable non-profit organizations, based on their written agreement, approved by the Commissioner of Citywide Administrative Services pursuant to §12-06 of these rules, for the joint conduct and sharing in the result of annual solicitation campaign.

Commissioner. "Commissioner" shall mean the Commissioner of Citywide Administrative Services.

Coordinating agency. "Coordinating agency" shall mean a federated community campaign, as defined in section 93-b of the General Municipal Law, which is approved by the Commissioner of Citywide Administrative Services pursuant to §12-05 of these rules to serve as the agent for the Combined Municipal Campaign.

Year of contributions. Year of contributions. "Year of contributions" shall mean the calendar year or other period

designated by the Commissioner of Citywide Administrative Services for collection of the payroll deductions authorized by municipal employees pursuant to §93-b of the General Municipal Law on behalf of the Combined Municipal Campaign.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-01 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

Year of contributions amended City Record July 24, 1995 eff. Aug. 23, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 24, 1995:

The proposed amendments to the rules of the Department of Personnel and the Department of Finance are based upon the City Personnel Director's authority to administer personnel programs pursuant to Sections 813(a)(11) and (b)(7) of the New York City Charter and the authority granted the Commissioner of Finance by §93-b of the General Municipal Law. The New York City Charter §1043 provides that each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.

The proposed amendments to Rules §2-01, §2-06(e) and §2-09(c) of the Department of Personnel and the same amendments to §18-01, §18-06(e) and §18-09(c) of the rules of the Department of Finance, authorize payroll deductions for municipal employees' charitable contributions to continue beyond one year until such time as it is revoked or the employee leaves the agency of employment, whichever shall occur first. Although the Department of Personnel will continue to conduct annual solicitation campaigns, it is financially imprudent to have payroll deductions for municipal employees' charitable contributions terminate after each annual period. The necessity of the paperwork and processing of the annual authorizations for paycheck deductions is burdensome due to the large numbers involved. In addition, the work is redundant and can be avoided merely by adopting the proposed amendments. Finally, it permits many of the charitable organizations involved in the Combined Municipal Campaign to have more accurate and dependable sources of funds since the municipal employees' charitable contributions will not automatically terminate at the end of an annual period.

The proposed amendments will have no adverse effect on the rights of employees. The Combined Municipal Campaign is voluntary and the employee is always free to end any paryoll deductions or charitable contributions at any time by following the procedure already in existence (see Department of Personnel Rule §2-09(d); Department of Finance Rule §18-09(d)).

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-02 Coordinating Agency; Constituent Organizations.

The coordinating agency shall consist of the charitable non-profit organizations named as constituent members thereof upon the Commissioner of Citywide Administrative Services' approval of the coordinating agency, subject to changes by discontinuance of such participation or the addition of eligible charitable non-profit organizations. The coordinating agency shall give prompt written notice of any such changes to the Commissioner of Citywide Administrative Services.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-02 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-03 Charitable Non-Profit Organizations.

To be eligible as a constituent organization of the coordinating agency or as a participating organization in the Combined Municipal Campaign, a charitable non-profit organization must meet and maintain the following requirements:

(a) It shall be

(1) a private, non-profit corporation, association, or organization,

(2) incorporated or authorized to do business in New York, or a member of a federation of charitable organizations which is authorized to do business in New York, and

(3) organized to render voluntary charitable services for human health and welfare or recreation.

(b) It shall be and remain registered with the Secretary of State; in compliance with the requirements and provisions of article 7-A of the Executive Law of New York; and a tax exempt organization under the terms of Section 501(c)(3) of the U.S. Internal Revenue Code.

(c) It shall operate without discrimination in regard to all persons served by the campaign and comply with all requirements of law and regulations respecting nondiscrimination and equal employment opportunity with respect to its officers, staff, employees and volunteers.

(d) As its principal purpose, function and activity, it shall carry out a **bona fide** program of charitable services in

support and advancement of the health, welfare or recreation of a substantial number of persons in need of such services.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-03 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-04 Coordinating Agency; Qualification Requirements.

To be eligible for approval as the coordinating agency, a charitable non-profit organization shall meet all of the conditions specified in §12-03 of these rules, and in addition, shall

(a) constitute a federation of a substantial number of charitable non-profit organizations;

(b) conduct a **bona fide** program for the provision of services for human health and welfare or recreation services for the aid, support and advancement of a substantial number of residents in the City; and

(c) agree to combine with other eligible charitable non-profit organizations and/or federations of such organizations to form a Combined Municipal Campaign, and serve as agent of the Combined Municipal Campaign as set forth in §12-06 of these rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-04 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-05 Approval of Coordinating Agency.

(a) To solicit contributions among municipal employees, a charitable non-profit organization eligible pursuant to the conditions specified in §12-04 of these rules may make written application to the Commissioner of Citywide Administrative Services for approval as the coordinating agency for the City.

(b) In December of every year there shall be made available at the offices of the Commissioner of Citywide Administrative Services a proposed calendar of events for the preceding years' Combined Municipal Campaign, if any. This schedule shall include a timetable for application.

(c) The application shall contain a detailed statement and furnish documentation evidencing the organization's compliance with all conditions of eligibility as a coordinating agency and shall provide the following:

(1) corporate or registered business name and address of the organization; name, titles and addresses of its directors or principals and executive officers; registration number obtained upon registration pursuant to article 7-A of the Executive Law;

(2) concise description of the organization's structure, origin, and history of its activities in the City; financial statements for its two immediately preceding years of operation, showing contributions and other revenues received, administrative and overhead expenses, costs of operations and other significant financial data; a specification of the extent its operations have been carried out by volunteers' services;

(3) statement of its plan and program for performing charitable services within the City over the next three-year

period, with particular description of projected benefits to employees' communities of residence;

(4) copies of charter or certificate of incorporation, bylaws, latest external audit by a certified public accountant and letter from the Internal Revenue Service certifying tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code;

(5) a listing, by corporate or registered business name, address, and name of the authorized principal representative, of each constituent charitable non-profit organization included in the coordinating agency; the applicant shall certify that it has examined and established compliance by all of its constituent organizations with the conditions and requirements of eligibility specified in §12-03 of these rules.

(d) The applicant shall furnish additional information and documentation as requested by the Commissioner of Citywide Administrative Services.

(e) The Commissioner's determination as to the approval or refusal of an application hereunder shall be conclusive and binding, and written notice thereof shall be given to the applicant.

(f) If it should become necessary to change the coordinating agency while the annual solicitation campaign or the year of contributions is in progress, the Commissioner shall substitute another charitable non-profit organization eligible to be coordinating agency pursuant to §12-04 of these rules.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-05 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-06 Combined Municipal Campaign; Structure and Operations.

(a) For the purposes of conducting a joint annual solicitation campaign and sharing in the contributions of municipal employees obtained therefrom, the coordinating agency shall contract with all other organizations approved pursuant to §§12-07 and 12-08 of these rules to form a Combined Municipal Campaign.

(b) Such contract shall be subject to approval by the Commissioner of Citywide Administrative Services and shall:

(1) identify each charitable non-profit organization participating with the coordinating agency by corporate or business name and address, and name its authorized representative;

(2) provide an annual budget of the campaign and specify the allocation among the coordinating agency and participating organizations of administrative expenses including publicity, central receipt, accounting and distribution of contributions, and loss of anticipated income to the campaign due to withdrawal of consent to contribution, termination of employment, or other discontinuation of payroll deduction;

(3) state the method of calculation of the share of total contributions to be received respectively by the coordinating agency and each participating organization, and the manner of payment to them;

(4) inform participants that the administrative expenses of the campaign shall be divided equally among each participating agency; for this purpose each participating constituent member of a federation of charitable non-profit organizations shall be counted as a separate participating agency.

(5) Contain such other terms and conditions as may be required by the Commissioner.

(c) The coordinating agency shall be the recipient in the first instance of all contributions made by employees to the campaign, including both contributions collected through payroll deductions and those made by check. The coordinating agency shall act in a fiduciary capacity with respect to its receipt and distribution of the contributions in accordance with the terms of the Combined Municipal Campaign contract.

(d) The annual solicitation campaign shall be conducted at such times and pursuant to such procedures as shall be approved by the Commissioner.

(e) The coordinating agency shall submit a report to the Commissioner at the end of each calendar year and at such other times as the Commissioner may request, stating the total amount of contributions collected through the Combined Municipal Campaign, the amount received by each participating agency, and such other information as the Director may request.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-06 LL 59/1996 eff. Aug. 8, 1996.

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Subd. (e) amended City Record July 24, 1995 eff. Aug. 23, 1995. [See T55 §12-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-07 Application for Participation in the Combined Municipal Campaign.

(a) A charitable non-profit organization seeking participation in the Combined Municipal Campaign shall make written application therefor to the Commissioner, who shall forward such application to the coordinating agency.

(b) Such application shall be made on the form prescribed by the Commissioner and shall be accompanied by all required documentation.

(c) The coordinating agency shall review the applications and approve the applications of all organizations qualified pursuant to §12-03 of these rules.

(d) The coordinating agency shall notify each applicant in writing whether or not it has been accepted as a participating organization in the Combined Municipal Campaign. If an applicant has not been accepted for participation, such notice shall state the reasons therefor, and shall state that the decision may be appealed to the Commissioner within fourteen days.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-07 LL 59/1996 eff. Aug. 8, 1996.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-08 Review of Non-Acceptance for Participation.

(a) An organization which has been notified of non-acceptance for participation in the Combined Municipal Campaign may, within fourteen days of the date notice was sent to the applicant by the coordinating agency, appeal in writing to the Commissioner for review of the determination of the coordinating agency. Copies of all material previously submitted to the coordinating agency shall be furnished to the Commissioner by the organization seeking review.

(b) The Commissioner, consistent with these rules, shall determine whether sufficient grounds existed for non-acceptance of the applicant or whether the coordinating agency's decision shall be reversed, in which case the Commissioner shall direct the coordinating agency to accept the applicant for participation in the Combined Municipal Campaign.

(c) The Commissioner's written determination shall be transmitted to the applicant and the coordinating agency, and shall be final and conclusive. Upon a determination directing the acceptance of the applicant, the coordinating agency shall forthwith arrange for the participation of the applicant in the Combined Municipal Campaign.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-08 LL 59/1996 eff. Aug. 8, 1996.

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FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

68 of 158 DOCUMENTS

Rules of the City of New York

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

55 RCNY 12-09

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 12 MUNICIPAL EMPLOYEES' CHARITABLE CONTRIBUTIONS*1

§12-09 Conduct of Solicitation Among City Employees.

(a) Contributions by employees to any charitable non-profit organization shall be purely voluntary.

(b) No form of pressure or coercion shall be used at any time by any employee or charitable non-profit organization to persuade employees to contribute to any charitable non-profit organization.

(c) An employee who wishes to make a charitable contribution through the Combined Municipal Campaign shall do so by completing and signing the form furnished by the Director. The employee shall indicate on the form whether the contribution is to be given to a particular organization participating in the Combined Municipal Campaign, or to the Combined Municipal Campaign itself for distribution to all participating organizations in the manner set forth in this section. Contributions may be made by submitting a single check made out to the order of the Combined Municipal Campaign, or by consenting to payroll deduction of a specified amount per pay period. If the employee chooses to contribute to the Combined Municipal Campaign through payroll deduction, the year of contribution shall be deemed to be the period between the time the consent to the deduction is given and the time such consent is withdrawn or the employee leaves his/her agency of employment, whichever shall occur first. The deduction shall continue until the employee either withdraws his/her consent to the payroll deduction or the employee leaves his/her agency of employment, whichever shall occur first.

(d) Employees shall be allowed to withdraw their consent to payroll deduction for contribution to charitable non-profit organizations at any time, upon written notice to the Commissioner.

(e) Contributions received by the Combined Municipal Campaign which are not designated for receipt by a

particular participating organization shall be distributed among all participating organizations in the following manner: the total amount of such undesignated funds, less administrative expenses agreed upon as provided in §12-06 of these rules, shall be divided by the total number of participating agencies, and an amount equal to the dividend shall be received by each agency. For the purposes of this calculation, each constituent member of a federation of charitable non-profit organizations shall be counted as a separate participating agency, but the federation to which such member belongs shall receive that member's share of the undesignated funds, to be distributed in accordance with the federation's agreement with its members.

(f) When an employee's paycheck is refunded by the employee's agency to the Department of Finance, any charitable contribution deducted for the period covered by such paycheck shall be returned to the City by the coordinating agency, or recovered by the City from the Combined Municipal Campaign by deduction from subsequent payments.

HISTORICAL NOTE

Section renumbered formerly Title 59, §2-09 LL 59/1996 eff. Aug. 8, 1996.

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FOOTNOTES

1

[Footnote 1]: * These provisions were jointly adopted by the Department of Finance and the City Personnel Director and therefore also appear at Title 19, Chapter 18.

Rules of the City of New York

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

55 RCNY 12 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

APPENDIX A PERSONNEL RULES AND REGULATIONS OF THE CITY OF NEW YORK*1

APPENDIX A PERSONNEL RULES AND REGULATIONS OF THE CITY OF NEW YORK*1

RULE I-DEFINITIONS

Agency. Agency is any department, administration, board, body or authority possessing separate and independent powers and functions and recognized as such by the department of personnel.

Agency Head. Agency head is the head of an agency.

Announcement. Announcement is the official notice of examination.

Appointing Officer. Appointing officer is the officer, commission, board, body or authority having the power of appointment to subordinate positions.

Certifying Agency. Certifying agency is an agency which administers and certifies eligible lists for classes of positions unique to such agency.

Civil Service of New York City or Civil Service. Civil Service of New York City or Civil Service includes all offices and positions in the definitions hereinafter set forth of "classified service" and "unclassified service".

Class of Positions. Class of positions means a group of positions substantially similar with respect to duties, responsibilities, qualifications and examination requirements to the extent that the same title may be used to designate such positions and the same salary grade may be equally applied thereto.

Classified Service. Classified service means all offices or positions in the civil service of New York City, classified under one of the four jurisdictional classes: exempt; competitive; non-competitive; labor; including such offices and positions in the New York City housing authority, triborough bridge and tunnel authority, New York City transit authority, New York City board of education, and the offices of all district attorneys and all public administrators within the City of New York.

Commission. Commission means the New York City civil service commission.

Compensation. Compensation is the annual salary attaching to a position or its equivalent if stated by the day, week, month, hour or other unit. Maintenance in the form of board and lodging or its monetary equivalent as duly fixed may also be included therein.

Day. Day is each day of the week; provided, however, if the last day for completing action on any matter is a Saturday, Sunday or holiday, it shall be the next business day.

The Department of Citywide Administrative Services. The Department of Citywide Administrative Services is the department established by chapter thirty-five of the New York City charter.

Examination. Examination is the process by which the department of personnel or other examining agency ascertains the fitness of candidates for entrance into the classified service or promotion therein.

Examining Agency. Examining agency is an agency which schedules and conducts non-written promotion examinations for positions in that agency.

Grade or Salary Grade. Grade or salary grade is the order or standing of a position with reference to the full-time annual compensation attaching to it or, if compensation be paid on other than a full-time per annum rate, then the equivalent of such rate as determined by the commissioner of citywide administrative services.

Jurisdictional Classification. Jurisdictional classification is the assignment of positions in the classified service to the exempt, non-competitive, labor or competitive classes.

Period of Service. In computing the length of a period of service in order to attain a prescribed eligibility requirement, whenever the first working day is immediately preceded by a Saturday, Sunday or public holiday, or a combination thereof, such "period of service" shall be deemed to commence on the day following the last work day preceding the Saturday, Sunday or public holiday, or combination thereof.

Position. Position means a particular office or employment in the civil service.

Position Classification. Position classification is a grouping together under common or descriptive titles of positions that are substantially similar in the essential character and scope of their duties and responsibilities and in the qualification requirements thereof.

Position Reclassification. Position reclassification is the reassignment of a position or positions from one class of positions to a different class of positions.

Publish. The term "publish" means making a public announcement by advising the public or making known of something to the public or bringing before the public either by posting publicly and conspicuously in the office of the department of personnel or other appropriate agency or printing or causing to be printed and to issue from a newspaper, or such other distribution or circulation as the commissioner of citywide administrative services deems appropriate.

Regulation. Regulation is a resolution of the commissioner of citywide administrative services setting forth policy or procedures for the effectuation of the provisions of the civil service law of the State of New York and the rules of the commissioner of citywide administrative services, which shall not be inconsistent with or supersede the civil service

law or the rules.

Salary Grade Allocation. Salary grade allocation is the assignment of a class of positions to one of the salary grades set forth in the classification rules.

Salary Grade Reallocation. Salary grade reallocation is the reassignment of a class of positions from one salary grade to another salary grade.

Service Rating, Performance Rating, or Performance Evaluation. Service rating, performance rating, or performance evaluation means a rating or evaluation of an employee for performance in a position as defined in the rules or regulations of the commissioner of citywide administrative services.

Subject. Subject is a subdivision of a test.

Terminal Date. If the "terminal date" of a prescribed period in which to accomplish an act of duty occurs on a Saturday, Sunday or public holiday, or a combination thereof, such date shall be deemed to be the first working day following thereupon.

Test. Test is a major subdivision of an examination.

Title. Title is the designation of a position based upon its duties and functions.

Unclassified Service. Unclassified service means all offices or positions in the civil service of New York City as described in section thirty-five of the civil service law.

RULE II-APPLICABILITY AND ADMINISTRATION

SECTION I-PERSONNEL ADMINISTRATION

2.1. (a) The commissioner of citywide administrative services shall have the power to promulgate rules and regulations relating to the personnel policies, programs and activities of city government in furtherance of and consistent with state civil service law and chapter thirty-five of the New York City charter.

(b) The commissioner of citywide administrative services shall have all the powers and duties of a municipal civil service commission provided in the civil service law or in any other statute or local law other than such powers and duties as are by chapter thirty-five of the New York City charter assigned to the mayor, the city civil service commission or the heads of agencies.

(c) The heads of agencies shall have the powers and duties of personnel management as provided for in chapter thirty-five of the New York City charter.

SECTION II-RULES

2.2. These rules shall have the force and effect of law.

SECTION III-REGULATIONS

2.3. The commissioner of citywide administrative services shall have power to adopt suitable regulations to carry out the provisions of the civil service law, the New York City charter and the rules.

SECTION IV-GENERAL ADMINISTRATION AND

ENFORCEMENT

2.4. (a) The commissioner of citywide administrative services shall have the authority and responsibility in the administration and enforcement of the rules and regulations prescribed thereunder and shall possess the powers and duties assigned to the commissioner of citywide administrative services pursuant to the provisions of chapter thirty-five of the New York City charter.

(b) The commissioner of citywide administrative services shall prescribe directives and orders for the instruction of the staff of the department of citywide administrative services and for the execution of the rules and regulations and wherever practicable, shall prescribe forms for all applications, certifications, reports, records and returns required thereunder.

SECTION V-APPLICABILITY

2.5. These rules shall apply to all offices and positions in the classified service of the city including offices and positions in the New York City housing authority, New York City transit authority, triborough bridge and tunnel authority, New York City board of education, and the offices of all district attorneys and all public administrators within the City of New York.

SECTION VI-RULE CHANGES; CALENDAR

2.6. (a) No proposed amendment, modification or addition to the rules shall be acted upon until public notice thereof shall be given in a designated newspaper for not less than three days prior to a public hearing thereon. Such notice shall set forth the proposal; but notice and public hearing shall not be necessary where the purpose of the proposed amendment, modification or addition is to conform with a change in a statute.

(b) Certified copies of all duly adopted amendments, modifications or changes of rules shall be transmitted to the offices of the secretary of state, the corporation counsel, the city clerk and to said designated newspaper for publication. Certified copies of all duly adopted regulations shall be transmitted to all of the foregoing except the office of the secretary of state.

(c) The commissioner of citywide administrative services shall cause to be published in said designated newspaper, as the city personnel director may determine, those minutes of general interest or broad application appearing as items in the calendar. Copies of the entire calendar shall be maintained for public inspection at the office of the department of citywide administrative services.

(d) If one year after the date of the public hearing held to consider approval of a change of a rule of the commissioner of citywide administrative services (as provided for by section 20 of the New York State civil service law) either the commissioner of citywide administrative services or the mayor of the City of New York or the state civil service commission has not acted upon the matter, the resolution shall automatically be deemed withdrawn unless the period of consideration is extended by an official action of the commissioner of citywide administrative services.

SECTION VII-NON-DISCRIMINATION; EQUAL OPPORTUNITY

2.7. (a) There shall be no unlawful discrimination in city employment on the basis of race, sex, age, religion, national origin or handicap, and equal opportunity in employment shall be ensured and promoted in the administration of personnel.

SECTION VIII-CONTINUITY AND PRESERVATION

2.8. Any resolutions, equivalency tables, terminal dates, restrictions, terms and conditions, and regulations in connection with the rules of classification in force and effect immediately prior to the effective date of these rules, shall continue to be in force and effect to the extent theretofore provided under the provisions of these rules, unless otherwise provided herein.

RULE III-JURISDICTIONAL CLASSIFICATION

SECTION I-THE EXEMPT CLASS

3.1.1. Definition. The exempt class shall include all offices and positions in the classified service enumerated in section forty-one of the civil service law and all other subordinate offices or positions for the filling of which competitive or non-competitive examination shall be found by the commissioner of citywide administrative services to be not practicable.

3.1.2. Application to Classify. An application by an agency to classify in the exempt class a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why examination, competitive or non-competitive, is impracticable.

3.1.3. Number of Positions; Classification by Rule. Not more than one appointment shall be made to or under the title of any office or position placed in the exempt class unless a different number is specifically prescribed in the classification rules. No office or position shall be deemed to be in the exempt class unless it is specifically named in such class in the rules.

3.1.4. Agency Certificate. Appointments to positions in the exempt class may be made without examination; but the agency head shall in each case submit to the department of personnel, in such form as it shall prescribe, a certificate which shall include:

(a) the title of the position;

(b) the full name and residence of the appointee;

(c) the place of the appointee's residence for five years immediately preceding appointment;

(d) the appointee's previous appointments to and periods of service, if any, in the public service;

(e) the appointee's qualifications for the office or position to be filled.

3.1.5. Evaluation Upon Vacancy. (a) Upon the occurrence of a vacancy in any position in the exempt class, the commissioner of citywide administrative services shall study and evaluate such positions and, within four months after the occurrence of such vacancy shall determine whether such position, as then constituted, is properly classified in the exempt class. Pending such determination, such position shall not be filled, except on a temporary basis.

(b) If the commissioner of citywide administrative services shall determine that such position is properly classified in the exempt class, such appointment shall be deemed effective as exempt as of the original date of appointment. The determination of the commissioner of citywide administrative services thereon shall be recorded.

SECTION II-THE NON-COMPETITIVE CLASS

3.2.1. Definition. The non-competitive class shall include all positions that are not in the exempt or labor class and for which it is found by the commissioner of citywide administrative services not to be practicable to ascertain the merit and fitness of applicants by competitive examination.

3.2.2. Application to Classify. An application by an agency to classify in the non-competitive class a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why competitive examination is impracticable.

3.2.3. Classification by Rule. (a) Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class, unless a different or unlimited number is specifically prescribed in the

classification rules. No office or position shall be deemed to be in the non-competitive class unless it is specifically named in such class in the rules.

(b) The commissioner of citywide administrative services shall designate among positions in the non-competitive class those positions which are confidential or require the performance of functions influencing policy.

3.2.4. Examination. Appointments to positions in the non-competitive class shall be made after such non-competitive examination as is hereinafter prescribed and all such examinations shall be subject to the control of the commissioner of citywide administrative services.

3.2.5. Agency Examiners. (a) In each agency there shall be a board of examiners for non-competitive positions, consisting of three members who are officers or employees of the agency designated by the agency head subject to the approval of the commissioner of citywide administrative services.

(b) In each institution of an agency there may be an institutional examiner who shall be designated by the agency head subject to the approval of the commissioner of citywide administrative services.

(c) Members of the agency board of examiners and the institutional examiners shall, insofar as practicable, be persons in the competitive class.

3.2.6. Scope of Examination. Such examinations shall be conducted so as to show that the candidate

(a) is free from any physical or medical disability which will interfere with the proper discharge of the candidate's duties;

(b) is a person of satisfactory character and reputation;

(c) possesses the requisite knowledge and ability;

(d) is qualified by experience or training to discharge the duties of the position efficiently.

3.2.7. Examination Reports; Action of Commissioner of Citywide Administrative Services. The reports of the character, scope and results of the examination of each candidate for a non-competitive position conducted by an agency board of examiners or by an institutional examiner, as the case may be, shall be transmitted to the commissioner of citywide administrative services or appropriate forms, when approved by such board at the end of each month or as otherwise prescribed in the regulations by the commissioner of citywide administrative services. If such reports are disapproved in whole or in part by the commissioner of citywide administrative services, the employees therein disapproved shall have their appointments terminated.

3.2.8. Compensation. Except as otherwise provided, the maximum compensation for positions in the non-competitive class shall be stated on a without maintenance basis. However, appointments may be made with or without maintenance. Where appointments are made with maintenance, the cash compensation for persons receiving maintenance shall be determined by subtracting the value of maintenance from the stated salary. A schedule showing allowable maintenance shall be prepared.

3.2.9. [Deleted 6/30/86]

3.2.10. Positions for the Physically or Mentally Disabled. (a) The commissioner of citywide administrative services may determine a prescribed number of positions, not to exceed the maximum set by state law, with limited duties which can be performed by physically or mentally disabled persons who are found qualified, in the manner prescribed by law, to perform such duties.

(b) Upon such a determination, such positions shall be classified in the non-competitive class, and shall be filled by

persons who shall have been certified by either the commission for the blind and visually handicapped in the state department of social services as physically disabled by blindness or by the state education department as otherwise physically or mentally disabled and, in any event, qualified to perform satisfactorily the duties of any such position. At least three hundred of such positions shall be filled by persons who have been certified as physically disabled. If no qualified physically disabled persons have applied for such positions, the commissioner of citywide administrative services may determine to fill those unfilled positions with qualified mentally disabled persons.

(c) The commissioner of citywide administrative services shall issue procedures for approval of appointments of physically or mentally disabled persons to such non-competitive positions as are established pursuant to this rule.

3.2.11. Service Outside the City of New York. The commissioner of citywide administrative services may except from competitive examination any qualified person who is to render services in a locality outside the city and who is a resident of such locality, where competitive examination is not practicable. No such person shall be eligible for transfer or assignment to work within the city.

SECTION III-THE LABOR CLASS

3.3.1. Definition; Clssification; Requirements. (a) The labor class shall comprise all unskilled laborers in the classified service as are not classified in the competitive or non-competitive class.

(b) The commissioner of citywide administrative services shall prescribe the requirements and tests to be held for positions in the labor class.

3.3.2. Termination. Upon the termination of an employment in the labor class, the agency head shall certify to the department of citywide administrative services the reasons therefor.

SECTION IV-THE COMPETITIVE CLASS

3.4.1. Definition. The competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination and shall include all positions now existing or hereafter created, of whatever functions, designations, or compensation, except such positions as are in the exempt class, the non-competitive class or the labor class.

3.4.2. Application to Otherwise Classify. An application by an agency to classify in the exempt, non-competitive or labor class, a position not specifically thus classified by law shall not be considered unless it is accompanied by a statement setting forth the reasons why competitive examination is impracticable.

3.4.3. Examination. The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the commissioner of citywide administrative services and as provided for in these rules.

3.4.4. Jurisdictional Reclassification. Whenever a position in the exempt, non-competitive or labor class is reclassified into the competitive class, the permanent incumbent of such position, if there be any at the time of such reclassification, shall continue to hold the position with all the rights and status of a competitive employee.

RULE IV-EXAMINATION PROCEDURES, VETERANS

PREFERENCE, ELIGIBLE LISTS AND CERTIFICATION

SECTION I-GENERAL EXAMINATION PROCEDURES

4.1.1. General Provisions; Applicability. (a) The commissioner of citywide administrative services shall conduct examinations for such positions as may be necessary to anticipate the needs of the city service.

(b) The head of an examining agency shall conduct non-written promotion examinations for such positions in the agency as may be necessary to anticipate the needs of the agency.

(c) The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

4.1.2. Scheduling of Examinations. The department of citywide administrative services shall maintain the general schedule of all examinations for positions in the city service.

4.1.3. Examining Agency Examination Plans. Agency examination plans for non-written promotion examinations shall contain such material as set forth in these rules or provided in the regulations. Such plans shall be submitted to the commissioner of citywide administrative services for approval prior to the holding of such examination.

4.1.4. Job Analysis. (a) A job analysis shall be conducted for each examination.

(b) Agencies shall assist the department of citywide administrative services in the preparation of job analyses for examinations conducted by the department of citywide administrative services.

(c) Job analyses conducted by examining agencies for non-written promotion examinations shall be submitted to the department of citywide administrative services by the examining agency.

4.1.5. Examination Experts. The commissioner of citywide administrative services may secure outside expert assistance in examinations or may approve an agency examination plan providing for such assistance in such cases as the commissioner of citywide administrative services deems appropriate and necessary.

4.1.6. Responsibility for Examination. (a) Every examination shall be under the direction of the assistant commissioner for examinations or designated officer of the examining agency, who shall consult with agency heads concerning the qualifications for the position for which an examination is to be held.

(b) Such examination shall be free from the influence or participation of the agency head or subordinates, except those who may be assigned to assist such assistant commissioner for examinations or designated officer of the examining agency who shall have the sole direction and control of such individuals during the period of such assignments.

4.1.7. Test and Weight. The tests comprising an examination and the relative weight given to each shall be fixed prior to each examination by the assistant commissioner for examinations in charge or in the examining agency's examination plan subject to the approval of the citywide administration services.

4.1.8. Preparation of Examinations. (a) The assistant commissioner for examinations or designated officer of the examining agency shall assign examiners for a particular examination.

(b) All written questions prepared by such examiner shall be placed in safe compartments provided by such assistant commissioner for examinations or designated agency officer. Such questions shall be printed from type or other process under the immediate supervision of such assistant commissioner for examinations or designated agency officer or a designated subordinate.

(c) The assistant commissioner for examinations or designated agency officer shall be responsible for the safekeeping of such questions unless relieved by the commissioner of citywide administrative services or agency head, as the case may be. So far as practicable, such printing shall be done immediately prior to the date of the examination.

4.1.9. Announcement. (a) In advance of an examination, the commissioner of citywide administrative services shall prepare and publish an announcement setting forth the title of the position, the minimum qualifications required, the tests of the examination, and such other information as the commissioner of citywide administrative services may

deem necessary.

(b) Where an agency is conducting a non-written promotion examination such announcement shall be included in the agency's examination plan and upon approval by the commissioner of citywide administrative services the announcement shall be published by such agency.

4.1.10. Publication. Such announcement shall be published daily throughout the entire filing period. Where the announcement does not specify a closing date, a filing period shall not be closed without at least three days' notice by publication. Such announcement and list of examinations for which applications are being received shall be posted conspicuously in the office of the department of citywide administrative services or of the examining agency, as the case may be. The provisions of paragraph 4.1.9 of this section relative to the publication of announcements shall not be applicable where a nomination for promotion is made pursuant to paragraph 5.3.7 of these rules.

4.1.11. Modification. The commissioner of citywide administrative services may, after the announcement has been published, subdivide the several tests into subjects or parts, or approve such action by an examining agency. Notice of such action must be given at the time such tests are held.

4.1.12. Limitation. Eligibility may be limited to one sex where the duties of the position involve the institutional or other custody or care of persons of the same sex, or visitation, inspection or work of any kind the nature of which constitutes a bona fide occupational qualification requiring sex selection.

SECTION II-APPLICATIONS AND RECRUITMENT

4.2.1. Application Forms and Completion. (a) The standard application forms for examinations shall be furnished by the commissioner of citywide administrative services or examining agency without charge to all persons requesting the same.

(b) An applicant shall state upon the prescribed form such information as is required including the applicant's background, experience and qualification for the position sought and merit and fitness for the public service. Applications shall be subscribed by the applicant and shall contain a declaration that the statements are made subject to the penalties of perjury.

(c) The personal history form or other prescribed form provided in connection with the investigation of an applicant shall be deemed a part of the application.

4.2.2. Filing Period. Unless otherwise provided in the announcement of the examination, the commissioner of citywide administrative services shall fix the period, or shall approve the period fixed by the examining agency, to be not less than two weeks, during which applications shall be received. There shall be not less than ten days between the last day for the receipt of applications as originally publicly announced and the date of the first test in an examination unless otherwise provided in the announcement of the examination.

4.2.3. Filing Fees. Filing fees shall be accepted by the department of citywide administrative services for all examinations including those conducted by an examining agency. The amounts of such fees and the terms and conditions for receipt and acceptance and any waivers shall be set forth in the regulations.

4.2.4. Non-Return of Applications. All applications shall be dated. An accepted application shall not be returned to the applicant or the applicant's agent, as the case may be.

4.2.5. Defective Application. An application found to be defective shall be suspended. Where an application is found to be incomplete or defective or not accompanied by the proper fee, if any, such application shall not be accepted unless the defect or omission has been corrected by the applicant and returned within seven days from the date of notification to the applicant of the required corrections.

4.2.6. Recruitment. Recruitment of persons for positions in the city service shall be conducted by the department of citywide administrative services and by agencies. Recruitment procedures shall include those set forth in the regulations or otherwise prescribed by the commissioner of citywide administrative services.

SECTION III-DISQUALIFICATION OF APPLICANTS

OR ELIGIBLES

4.3.1. General Provisions. (a) The commissioner of citywide administrative services, upon investigation of applicants for positions in the civil service or review of their qualifications, may refuse to examine an applicant or after examination refuse to certify or refuse to permit the certification of an eligible for reasons and in the manner prescribed by law or these rules.

(b) Investigation of the qualifications and background of an eligible may be made after appointment and, upon finding facts which, if known prior to appointment, would have warranted disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in the eligible's application, examination or appointment, the certification of such eligible may be revoked by the commissioner of citywide administrative services and the employment directed to be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud.

(c) No person shall be disqualified by the commissioner of citywide administrative services unless such person has been given a written statement by the commissioner of citywide administrative services of the reasons therefor and afforded an opportunity to make an explanation and to submit facts in opposition to such disqualification. An examining agency's determination of eligibility of candidates for such agency's non-written promotion examination shall be subject to the provisions of 8.2.2 and 8.2.3 of these rules.

(d) Agencies shall assist the department of citywide administrative services in investigations in the manner prescribed by the commissioner of citywide administrative services.

4.3.2. General Requirements. (a) An applicant or eligible must possess the established minimum requirements and qualifications for admission to an examination or for appointment to a position.

(b) Satisfactory character and reputation shall be deemed a part of the established minimum requirements and qualifications for admission to an examination or for appointment to a position.

(c) A person convicted of petit larceny may in the discretion of the commissioner of citywide administrative services be examined or certified as a police officer or fire fighter. A person dishonorably discharged from the armed forces of the United States shall not be examined, certified or appointed as a police officer or fire fighter.

(d) Except as provided in subdivisions (e) and (f) hereof, any physical or mental disability, disease, injury, abnormality, or defect which renders a person unfit for the performance in a reasonable manner of the duties of the position the person seeks or the failure to meet the required medical or physical standards of a position, shall constitute grounds for the disqualification of such person.

(e) In the case of blind or otherwise physically handicapped persons as described in section fifty-five of the civil service law, who do not qualify under subdivision (d) hereof, due consideration shall be given to such findings as may be submitted by the state commission for the visually handicapped or the state education department, as the case may be, and such persons, if otherwise qualified, may be certified to positions from eligible lists upon which their names appear either generally or upon limited terms and conditions, as provided by regulations and procedures adopted by the commissioner of citywide administrative services.

(f) Where a person on an eligible list does not qualify under subdivision (d) hereof for the position for which the

list was established, and where such list is declared appropriate for a position requiring lesser medical and physical standards than those required for the original position, such person shall, upon application during the life of the list, if he or she meets such lesser standards, be qualified for the latter position and shall be certified thereto in his or her regular order on such list.

4.3.3. Burden. The burden of establishing the required qualifications shall be upon the applicant or eligible.

SECTION IV-ADMINISTRATION AND RATING

OF EXAMINATIONS

4.4.1. Applicability. The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

4.4.2. Admission to Examination; Identification. A candidate shall not be admitted to an examination or any test thereof whose application therefor has not been presented and accepted in accordance with the rules. The name of a candidate who has not been fingerprinted at the time of examination shall not be placed on the eligible list.

4.4.3. Processing of Examination Papers. On the day of the examination, the admission cards of the candidates shall be enclosed in an envelope and sealed. In an examination in which the papers are rated in whole or in part by examiners, the identity of each candidate shall remain concealed until the ratings are completed. In an examination in which all procedures from the rating of tests to the production of the list are accomplished entirely by machine, the seal may be broken prior to rating solely to permit verification of mark-sensed application numbers.

4.4.4. Oral Tests. Oral tests, wherever practicable, shall be recorded by a suitable method to provide a reviewable record.

4.4.5. Second or Special Examinations. Except as provided in paragraph 4.4.6 hereof, or as provided in the military law of the State of New York, no candidate shall be given a second or special competitive test in connection with an examination held, unless it be shown to the satisfaction of the commissioner of citywide administrative services or the head of the examining agency that the candidate's failure to take or complete such test was due to:

(a) a manifest error or mistake for which the department of citywide administrative services or the examining agency is responsible, the nature of which shall be recorded;

(b) compulsory attendance before a court or other public body or official having the power to compel attendance;

(c) physical disability incurred during the course of and within the scope of the municipal employment of such candidate where such candidate is an officer or employee of the city; or

(d) absence from the test within a period of one week after the date of death of a spouse, mother or father, sister or brother, or child of such candidate where such candidate is an officer or employee of the city.

No such claim shall be granted unless it is submitted in writing to the department of citywide administrative services or the examining agency either in person or by certified or registered mail within two months following the date of the regular examination.

4.4.6. Sabbath Observers. A candidate claiming to be unable to participate in an examination when originally scheduled because of the candidate's religious beliefs may seek consideration as a sabbath observer by requesting a special examination by submitting to the department of citywide administrative services or examining agency such request in writing either in person or by certified or registered mail no later than five days prior to the date of the examination. A written statement signed by the candidate's religious leader attesting to the candidate's religious beliefs and certifying that the candidate is a sabbath observer and that it is contrary to the candidate's tenets to participate in an

examination during the sabbath must accompany said written request.

4.4.7. General Rating Procedures. Except when otherwise specified by the assistant commissioner for examinations or by the designated officer of the examining agency, each test, subject or part of an examination shall be rated by not less than two examiners. They, or employees designated by the assistant commissioner for examinations or by the designated officer of the examining agency, shall then affix to each paper or record a rating expressing the average of their judgment attested by their respective signatures or initials.

4.4.8. General Rating Standards. The rating shall be comparative and in accordance with such standards as the needs of the service may require.

4.4.9. Passing Rating. (a) Unless otherwise specified by resolution or regulation of the commissioner of citywide administrative services, or by the announcement of examination, candidates must attain a final examination rating of not less than seventy percent in an examination in order to be placed upon an eligible list for certification and appointment.

(b) The required passing rating in any test, subject or part of an examination shall be fixed not later than the time of the holding thereof or as soon as practicable thereafter by the assistant commissioner for examinations in charge or by the designated officer of the examining agency.

(c) Where it is anticipated that the number of eligibles will not meet the needs of the service, the commissioner of citywide administrative services or the head of an examining agency, as the case may be, may, in order to provide an eligible list to meet the needs of the service, authorize the use of any type or combination of types of conversion methods or a mathematical formula of penalties for incorrect answers on the basis of test difficulty and other relevant factors involved in the rating of any test.

(d) The commissioner of citywide administrative services or the head of an examining agency may prescribe that the passing mark shall be the lowest grade received among a certain fixed number of candidates graded highest in the examination or in any subject or part thereof.

(e) In the case of an examining agency, any action proposed to be taken pursuant to subparagraphs (b), (c) or (d) hereof which was not provided for in the agency plan for examination approved by the commissioner of citywide administrative services shall be submitted for such approval prior to any such action.

4.4.10. Finality of Rating. Except as otherwise provided by paragraph 4.4.13 hereof or by resolution or regulation of the commissioner of citywide administrative services, no final rating of a test, subject or part of an examination shall be subject to alteration or re-rating.

4.4.11. Candidates With Same Final Examination Rating. Whenever two or more candidates in an examination receive the same final examination ratings, their respective place on the resulting eligible list shall be determined for administrative reasons only by a sequence of the number derived from the last five and then the first four positions of their social security numbers.

4.4.12. Certification and Use of Eligible List Where Paragraph 4.4.11 Has Been Applied. (a) If the name of any eligible whose place on the eligible list has been determined in accordance with the procedures set forth in paragraph 4.4.11 is included in the certification for appointment the names of all other eligibles on the list having the same final examination rating as such eligible shall likewise be included in such certification.

(b) Appointments and promotions then may be made by the selection of any such eligible whose final examination rating is equal to or higher than the final examination rating of the third highest standing eligible qualified and willing to accept appointment or promotion.

4.4.13. Correction of Manifest Error or Mistake. The commissioner of citywide administrative services, at any time

prior to the establishment or during the existence of an eligible list, may correct any manifest error or mistake made in connection with an examination, on the initiative of the commissioner of citywide administrative services or that of the head of an examining agency, or in the granting of a claim of manifest error or mistake. Such action shall be taken in accordance with the procedures set forth in rule VIII of these rules and may result in a higher or lower rating. The nature of such manifest error or mistake shall be recorded.

SECTION V-ADDITIONAL CREDIT ON COMPETITIVE

EXAMINATIONS FOR VETERANS AND DISABLED VETERANS

4.5.1. Application for Additional Credit. (a) A veteran or disabled veteran who elects to claim additional credit as provided in the civil service law, shall so notify the commissioner of citywide administrative services and establish by appropriate documentary evidence eligibility for such additional credit.

(b) No such claim shall be accepted as approved which has not been filed prior to the establishment of the eligible list. However, such timely claim may, prior to appointment, be amended to reflect the disabled or non-disabled veteran status recognized by the veterans administration at the time the list was established.

4.5.2. General Procedures. (a) Prior to appointment or promotion, as the case may be, a veteran or disabled veteran reached for appointment or promotion on an eligible list by virtue of such additional credits, shall subscribe a statement on a form provided by the commissioner of citywide administrative services that no permanent original appointment or permanent promotion to a position in the civil service of the state or any civil division or city thereof had previously been obtained as a result of the additional credits prescribed in the civil service law.

(b) The agency head shall at the time of appointment require a person appointed by virtue of such additional credits to execute an instrument on a form prescribed by the commissioner of citywide administrative services, setting forth such person's public employment since January 1, 1951.

4.5.3. Use of Additional Credit. (a) A person who has received a permanent original appointment or permanent promotion to a position in the civil service of the state or any of its civil divisions as a result of additional credit shall not thereafter be entitled to additional credit, either as a veteran or disabled veteran, in any competitive examination for original appointment or promotion to any position in the civil service of the state or any civil division thereof.

(b) The appointment or promotion of a veteran or disabled veteran as a result of additional credits shall be void if such veteran or disabled veteran, prior to such appointment or promotion, had received a permanent original appointment or permanent promotion to a position in the civil service of the state or any of its civil divisions as a result of additional credits.

4.5.4. Exhaustion of Credits; Exceptions. When a veteran or disabled veteran accepts a permanent position from an eligible list by virtue of such additional credits, such person shall be deemed to have exhausted those credits unless:

(a) prior to the expiration of the probationary term, such veteran or disabled veteran resigns from the position; or

(b) the services of such veteran or disabled veteran are terminated at the end of or during the probationary term; or

(c) at the time of establishment of an eligible list, the position of a veteran or disabled veteran on such list has not been affected by the addition of credits; or

(d) at the time of appointment from an eligible list, a veteran or disabled veteran is in the same relative standing among the eligibles who are willing to accept appointment as if the veteran or disabled veteran had not been granted additional credits.

4.5.5. Withdrawal of Application; Election to Relinquish. (a) An application for additional credits may be

withdrawn by the applicant in writing at any time prior to the establishment of an eligible list or during its existence and prior to appointment or promotion therefrom. In such case, the election shall be irrevocable and the applicant's place on the eligible list shall be revised accordingly.

(b) Where such election is made in connection with certification to a position for which the list has been declared appropriate other than to the position for which the examination was held, it shall not affect the applicant's standing on the list in respect to the latter position.

4.5.6. Roster. There shall be established in the department of citywide administrative services a roster of all veterans and disabled veterans appointed or promoted as a result of the additional credits granted pursuant to the civil service law.

4.5.7. Disabled Veteran's Records. All certificates and other documents, memoranda, reports and information furnished by the United States veterans administration to the department of citywide administrative services in connection with claims for disabled veterans' preference shall be deemed confidential unless the commissioner of citywide administrative services determines that the withholding thereof is contrary to the public interest.

SECTION VI-ELIGIBLE LISTS

4.6.1. Establishment of Lists. (a) The provisions of this section shall apply to examinations conducted by the department of citywide administrative services and by examining agencies.

(b) The results of each examination shall be reported by the assistant commissioner for civil service or by the head of the examining agency, as the case may be, to the commissioner of citywide administrative services and the names of the candidates passing such examination shall be listed in the order of their respective final examination ratings. The names of disabled and non-disabled veterans who have duly established claims to additional credits shall be reported in the manner prescribed by law.

(c) The list thus reported shall be officially established only by order of the commissioner of citywide administrative services. The date prescribed in such order shall be the date of such establishment.

4.6.2. Terms and Conditions. An eligible list may be established subject to the conduct of such medical, physical, or other appropriate non-competitive qualifying tests, investigations and conditions as may be deemed appropriate by the commissioner of citywide administrative services.

4.6.3. Publication of Established Lists. An established eligible list shall be published as soon as practicable after establishment. Upon the establishment of an open competitive eligible list notification thereof shall be published as soon as practicable thereafter stating the title of the examination, the examination number, the number of passing candidates, the date of establishment, and such other information as the commissioner of citywide administrative services shall prescribe.

4.6.4. Notification to Candidates. Unless otherwise provided for in the notice of examination with respect to a continuing eligible list, the commissioner of citywide administrative services, upon the establishment of an eligible list, shall notify each candidate of the candidate's ratings and, if the candidate has received a passing final examination rating, of the numerical place on such list. Any candidate rejected for reasons other than failure to attain a passing final examination rating shall be advised of such reasons.

4.6.5. Inspection of Examination Papers. Except as otherwise provided by the commissioner of citywide administrative services, candidates may personally inspect their examination papers at the offices of the department of citywide administrative services, or the examining agency, as the case may be, at specified times in the presence of employees designated by the city personnel director or by the head of the examining agency.

4.6.6. Duration of Eligible Lists. (a) The duration of either an open competitive or promotion eligible list shall be not less than one nor more than four years from the date of establishment.

(b) Unless otherwise provided, an eligible list which has been in existence for one year or more shall terminate upon the establishment of an appropriate subsequent like list for the same title.

(c) Where the duration of an eligible list is fixed in the announcement of examination at less than four years, the commissioner of citywide administrative services may by resolution prior to the expiration date of such list extend the duration of such list up to the maximum limitation of four years, provided that such announcement of examination states that such extension may be made.

(d) The commissioner of citywide administrative services may also by resolution prior to the expiration date of an eligible list extend the duration of such list as provided for in section fifty-six of the civil service law, as amended by section one of chapter four hundred and forty-three of the laws of nineteen hundred and seventy-six.

SECTION VII-CERTIFICATION OF ELIGIBLE LISTS AND

SELECTION THEREFROM

4.7.1. General Provisions. (a) The provisions of this section shall apply to the certification of eligible lists by the commissioner of citywide administrative services or, in the case of classes of positions unique to an agency, the certification of eligible lists for such classes by the agency head.

(b) Appointments or promotions shall be made from the established list most nearly appropriate for the position to be filled, as determined by the commissioner of citywide administrative services.

(c) Appointment or promotion from an established eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the commissioner of citywide administrative services or the head of the certifying agency, as the case may be, as standing highest on such established list who are qualified and willing to accept such appointment or promotion. Where applicable, such selection shall be made as provided for in paragraph 4.4.12 of these rules.

(d) The rating of each eligible shall be stated in the certification.

(e) The agency head may review the examination application and records of each certified eligible at the office of the department of citywide administrative services.

4.7.2. Existing Eligible Lists. (a) When an eligible list has been in existence for less than one year and contains the names of less than three eligibles willing to accept appointment, and a new list for the same position or group of positions is established, the names of the eligibles remaining on the old list shall have preference in certification over the new list until such old list is one year old. During such period such names shall be certified along with enough names from the new list to provide a sufficient number of eligibles from which selection may be made.

(b) Where an old list which has been in existence for one year or more is continued upon the establishment of a new list which contains less than three names, the commissioner of citywide administrative services may certify or may authorize the head of the certifying agency to certify the names on the old list along with enough names from the new list to provide a sufficient number of eligibles from which selection may be made.

(c) Agency and city-wide promotion eligible lists shall not be certified for an agency until after the promotion unit eligible lists for that agency, if any, have been exhausted.

4.7.3. Additions to Certification. (a) If there be more than one position to be filled, or if the commissioner of citywide administrative services or certifying agency head has reason to anticipate declinations, or where the

certification is to be completed as set forth in this paragraph, the commissioner of citywide administrative services or certifying agency head shall supplement the certification for the selection by the addition of the names of those next in order on the established list. However, selection shall be made singly and in each case from the three highest names remaining qualified and eligible and willing to accept appointment or promotion, or from among those eligibles as provided for in paragraph 4.4.12 of these rules, as the case may be.

(b) On notification from an agency head that one or more eligibles have declined appointment and on receipt by the department of citywide administrative services from such officer of any such declination in writing, or of evidence of the failure of any such eligible to respond to a notice properly sent, such certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the list.

(c) Upon receipt by the head of a certifying agency of a written declination of appointment by one or more eligibles named in a certification or of evidence of the failure of any such eligible to respond to a notice properly sent, such certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the list.

(d) Where objection to the certification of one or more eligibles has been duly made by an agency head and the commissioner of citywide administrative services sustains such objection, the certification shall be completed by the addition of the name or names of the eligibles next in order of standing on the eligible list.

4.7.4. Limitation on Certifications. No name shall be certified more than three times to the same agency head for the same or similar position unless at such officer's request. However, only those who have been actually entitled to consideration for selection shall be charged with certification. For appointment to the position of police officer in the police, transit police, or housing police services, no name certified three times to one agency head shall be certified to another unless at such agency head's request.

4.7.5. Duration of Certification. A certification shall not remain in force and effect for a period longer than thirty days nor beyond the existence of the eligible list from which certification was made. Until such certification has been exhausted or terminated, no new certification shall be made for the same position in the same agency.

4.7.6. Revocation of Individual Certification or Appointment. Whenever a person not entitled to certification is certified, such certification and appointment, if any, shall be revoked by the commissioner of citywide administrative services.

4.7.7. Ineligibility for Further Certification. An eligible who has been appointed to a permanent position for which the list was established or to a similar position in the same or higher grade, shall no longer be eligible for certification from such list.

4.7.8. Conditional Certification. (a) Upon the initiative of the commissioner of citywide administrative services or upon request of the agency head, the commissioner of citywide administrative services may certify eligibles subject to investigation, medical test or other qualifying test or requirement, where such conditions were not provided for at the time an eligible list was established. Upon approval by the commissioner of citywide administrative services, such conditional certification may be made by the head of a certifying agency.

(b) Written notice of such conditional certification pursuant to this paragraph shall be given to eligibles at the time of appointment or promotion, as the case may be.

(c) Whenever, upon subsequent investigation, medical test or other qualifying test or requirement, an eligible thus certified is found to be not qualified, such certification shall be revoked by the commissioner of citywide administrative services and the employment, if any, of such eligible terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made except in the case of fraud.

4.7.9. Certification by Sex. The commissioner of citywide administrative services may authorize the limitation of certification from an eligible list to one sex when the duties of the position involve institutional or other custody or care of persons of the same sex, or the visitation, inspection, or work of any kind the nature of which is a bona fide occupational qualification requiring sex selection.

4.7.10. Selective Certification. (a) Selective certification may be made from an eligible list to fill similar or related positions which require additional or special qualifications not tested for specifically in the prescribed requirements or tests of an examination, in the manner provided in this paragraph.

(b) Upon the initiative of the commissioner of citywide administrative services or at the request of the head of an agency, the commissioner of citywide administrative services may selectively certify from an eligible list where the announcement of examination originally contained a specific provision for such selective certification.

(c) With respect to certifying agencies, the agency head may so selectively certify, where the announcement of examination originally contained a specific provision for such selective certification, upon approval by the commissioner of citywide administrative services.

(d) Selective certification shall be made only upon due notice to all affected eligibles on such list.

(e) Eligibles on such list who possess the additional or special qualifications required as evidenced by experience, appropriate licensure, possession of essential tools, equipment and facilities, or who pass an appropriate qualifying test shall be qualified for selective certification and shall be certified to such similar or related positions in the order of standing on the original list.

(f) Where the announcement of examination did not originally contain a provision for such selective certification, it shall not be made or authorized until intention to make such certification has been duly advertised in a designated newspaper and a public hearing thereon held by the commissioner of citywide administrative services in the same manner as is required for the adoption or amendment of a rule.

4.7.11. Certification Pools. Certification pools may be conducted at the discretion of the commissioner of citywide administrative services for the purpose of filling positions more expeditiously. Such certification pools shall be conducted pursuant to appropriate terms and conditions not inconsistent with the civil service law or these rules.

4.7.12. Continuing Eligible Lists. (a) The commissioner of citywide administrative services may establish continuing eligible lists for such classes of positions where the needs of the service require. Such continuing eligible lists shall consist of the names of candidates successful in tests which may be conducted from time to time and which shall be so constructed and rated so as to be as nearly equivalent as possible in coverage and difficulty.

(b) The name of any candidate who passes any such test and who is otherwise qualified shall be placed on such eligible list in the rank corresponding to the candidate's final rating on such test.

(c) The period of eligibility of successful candidates for certification and appointment from such continuing eligible lists shall be one year following the date on which such candidates first became eligible for certification.

(d) A candidate may take more than one test provided, however, that no such candidate shall be certified simultaneously with more than one rank on the continuing eligible list.

SECTION VIII-DECLINATION OF APPOINTMENT

4.8.1. Applicability. The provisions of this section shall apply to appointments from established eligible lists certified by the commissioner of citywide administrative services or by the head of a certifying agency.

4.8.2. Effect of Declination; Failure to Respond; Failure to Report. Except as otherwise provided in this section,

the name of an eligible who has been certified for employment in and offered an appointment to a position, whether or not the list was expressly established therefor, shall be withheld from certification for any position upon the occurrence of one of the following:

(a) declination by the eligible of an offer of appointment to any such position;

(b) failure of the eligible to respond to an offer of appointment within the period fixed by the agency head, provided that such period is not less than four days after the date of such offer;

(c) failure of the eligible to report for duty after accepting such position.

4.8.3. Exceptions for Declinations. (a) Notwithstanding the provisions of paragraph 4.8.2, declination by an eligible of an offer of appointment to a position, whether or not the list was expressly established therefor, shall result only in withholding such eligible's name from certification to a like position if the declination is for one of the following reasons:

(1) temporary inability to accept the position;

(2) in the case of original appointment the location in which the duties are to be performed. However, if the location is within the city of New York, such declination shall apply to the entire city, and if outside the city of New York, such declination shall apply to the entire county;

(3) in the case of a promotion, where the certification is from a citywide promotion list and the position offered is in an agency other than the agency where the eligible is employed;

(4) in the case of a promotion, location on the basis of borough or county in which the duties are to be performed.

(b) Where the offer of appointment is to a position other than that for which the list was expressly established and is declined by an eligible for that reason, such declination shall result only in withholding such eligible's name from further certification to any such other like position.

(c) Where the eligible declines appointment to a specific position for which the list has not been expressly established, because of the objectionable nature of the duties of such position, and the commissioner of citywide administrative services finds the duties to be of such nature, such eligible's name shall be withheld only for certification to a like specific position. However, where the list has been expressly established for such specific position, such person's name shall be withheld from certification upon declination of appointment for such reason.

(d) If a list established for permanent appointment is certified for temporary, seasonal or part-time employment, declination of an offer of appointment shall result only in withholding such eligible's name from certification for a position of a like duration of employment. However, where the eligible list has been expressly established for a position of a temporary, seasonal or part-time duration, declination of appointment to such position shall result in withholding the eligible's name from further certification.

4.8.4. Effect of Withholding from Certification on Certification to a Like Position. A person whose name has been withheld from certification shall not be eligible for like certification until all eligibles on the eligible list upon which such person's name appears have been reached for like certification unless such person submits an explanation satisfactory to the commissioner of citywide administrative services for the declination or failure to reply or to accept appointment. Such explanation must be filed in writing with the department of citywide administrative services at any time prior to the expiration date of the eligible list.

4.8.5. Conditions for Restoration. (a) The name of an eligible for an original appointment which has been withheld from certification shall not be restored to such list for certification, except upon written request therefor by such

eligible. No more than a total of three restorations shall be permitted.

(b) The name of an eligible for promotion to a higher position, which has been withheld from certification shall automatically be restored to the bottom of such list for certification. No more than a total of three restorations shall be permitted.

(c) The commissioner of citywide administrative services may, if the needs of the service require, restore names of eligibles covered by this paragraph 4.8.5 to a list without their written request. Such restorations shall not be included in the total of three restorations permitted.

4.8.6. Declination for Insufficiency of Compensation. When declination for insufficiency of compensation offered results in the selection of an eligible lower on the eligible list than the person who thus declined, the compensation of the person selected shall not be increased within one year after such selection beyond the amount declined, unless each eligible originally declining has received or declined appointment or promotion at the increased amount. However, at the discretion of the commissioner of citywide administrative services, for reasons to be recorded, this limitation may be waived.

4.8.7. Different Compensation. Notwithstanding the provisions of paragraph 4.8.6, upon the written request of an agency head setting forth the reasons therefor, the commissioner of citywide administrative services may certify to specified agencies, eligibles having specified additional qualifications at a rate of compensation above that offered to other persons on the same eligible list.

RULE V-APPOINTMENTS AND PROMOTIONS

SECTION I-APPOINTMENTS AND PROMOTIONS GENERALLY

5.1.1. Prohibition Against Out-of-Title Work. No person shall be appointed, promoted or employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless duly appointed, promoted, transferred or reinstated to such position in accordance with the law and rules prescribed therefor. No credit shall be granted in a promotion examination for out-of-title work.

5.1.2. Procedures for Identification and Oath. (a) Upon appointment or promotion an eligible shall be fingerprinted and shall execute in the presence of the agency head or representative the prescribed identification form.

(b) An eligible shall likewise take and file such oath or affirmation as may be required by law. Such oath shall not be required from an employee in the labor class and shall be required only in other cases upon original appointment or upon a new appointment following an interruption of continuous service and shall not be required upon promotion, demotion, transfer or other change of title during the continued service of the employee, or upon the reinstatement pursuant to law or rules of an employee whose services have been terminated and whose last executed oath is on file.

(c) The duly executed identification form of the eligible or employee, together with the notice of appointment or promotion, shall be transmitted to the department of citywide administrative services.

5.1.3. Appointment Subsequent to Qualification. Whenever a person has been declared qualified after investigation, medical or other qualifying tests or requirements, and is certified either by the commissioner of citywide administrative services or the head of a certifying agency for appointment after such qualification, such person upon appointment shall execute a supplemental statement, as the commissioner of citywide administrative services may prescribe, pertaining to such investigation, medical or other qualifying tests or requirements.

SECTION II-PROBATIONARY TERMS

5.2.1. Probationary Term. (a) Every appointment and promotion to a position in the competitive or labor class shall be for a probationary period of one year unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period.

(b) Every original appointment to a position in the non-competitive or exempt class shall be for a probationary period of six months unless otherwise set forth in the terms and conditions for appointment as determined by the commissioner of citywide administrative services. Appointees shall be informed of the applicable probationary period. However, such probationary period may be terminated by the commissioner of citywide administrative services or by the agency head before the end of the probationary period, and the appointment shall thereupon be deemed revoked. Nothing herein shall be deemed to grant permanent tenure to any non-competitive or exempt class employee.

5.2.2. Effect of Certain Prior Service and Military Law. (a) Notwithstanding anything to the contrary contained in paragraph 5.2.1, if a permanent employee has served in a promotional title and particular job assignment on a provisional or temporary basis for a continuous period equal to or greater than the probationary period for that title immediately prior to a permanent promotion to such title or, as determined by the commissioner of citywide administrative services, in a title in a similar grade and in such particular job assignment or similar job assignment in the same agency, the promotee shall not be required to serve a probationary period upon such promotion.

(b) Subject to the provisions of the military law of the state of New York, the computation of the probationary period shall be based on the time during which the employee is on the job in a pay status.

5.2.3. Status of Former Position Upon Promotion. Upon promotion, the position formerly held by the person promoted shall be held open for the promotee, and shall not be filled, except on a temporary basis, pending completion of the probationary term.

CASE NOTES

¶ 1. The rule provides that when a permanent employee is promoted to a position where he or she is required to serve a probationary term, the position vacated may not be permanently filled during the term of probation, and that during the probationary term, the employee has the right to return to the previous position at his or her own choice. The purpose of the rule is to provide some job security to a permanent employee who is promoted or transferred to a position in which he or she is required to serve a probationary term. Petitioner was a Contract Specialist within the Community Development Agency (CDA). He took an examination for a position of Staff Analyst with the CDA. The examination was open to all persons, whether or not they were current City employees. After passing the examination, petitioner received an appointment to Staff Analyst and was given a leave of absence from her Contract Specialist position. Before the probationary period was over, the CDA later terminated petitioner from her Staff Analyst position, allegedly because of insubordination. She then sought reinstatement to her position as Contract Specialist and brought an Article 78 petition after her request was denied. The court held that where petitioner had obtained her position through an open competitive examination rather than a promotional examination limited to persons in specified City employee titles, the regulation did not permit her to obtain reinstatement as of right to her former position. Bethel v. McGrath-McKechnie, 95 N.Y.2d 7, 709 N.Y.S.2d 888 (2000).

5.2.4. Waiver Upon Promotion. Upon promotion, the agency may waive the requirement of satisfactory completion of the probationary term at any time during such term.

5.2.5. Leave of Absence During Probationary Term. Whenever a probationer who has not completed a probationary term has been granted a leave of absence to accept appointment on a provisional, temporary, emergency or exceptional basis to another position in the city service or to accept permanent appointment to a position in another jurisdictional classification, the period of service in such position or positions may, in the discretion of the agency head who appointed such person as a probationer, be counted as satisfactory probationary service in determining the

completion of such probationary term.

5.2.6. Restoration After Separation From Service; Conditions. A probationer separated from the service for any reason other than fault or delinquency may be restored by, and at the discretion of, the commissioner of citywide administrative services to the eligible list from which selected, if it be in existence, with the same relative standing thereon for general certification therefrom or for certification to agencies other than the one from which the probationer was separated provided that:

(a) the time during which such person has actually served shall be deducted from the probationary term if such person be again selected by the same agency head;

(b) if selected by another agency head, such person shall be required to serve a full probationary term unless such agency head elects to credit such person with the time theretofore served.

5.2.7. Termination. (a) At the end of the probationary term, the agency head may terminate the employment of any unsatisfactory probationer by notice to such probationer and to the commissioner of citywide administrative services.

(b) Notwithstanding the provisions of paragraph 5.2.1, whenever any agency has with the approval of the commissioner of citywide administrative services established a prescribed formal course of study or training for all probationary employees in a given title or titles, the agency head may, at the close of such course of study or training, terminate the employment of any probationer who fails to complete successfully such course of study or training, as the case may be.

(c) Notwithstanding the provisions of paragraphs 5.2.1 and 5.2.7(a) the agency head may terminate the employment of any probationer whose conduct and performance is not satisfactory after the completion of a minimum period of probationary service and before the completion of the maximum period of probationary service by notice to the said probationer and to the commissioner of citywide administrative services. The specified minimum period of probationary service, unless otherwise set forth in the terms and conditions of the certification for appointment or promotion as determined by the commissioner of citywide administrative services, shall be:

(1) two months for every appointment to a position in the competitive or labor class and

(2) four months for every promotion to a position in the competitive or labor class.

5.2.8. Extension of Probationary Period. (a) Notwithstanding the provisions of paragraph 5.2.1, upon the written request of the agency head setting forth the reasons therefor and with the written consent of the probationer, the commissioner of citywide administrative services may authorize the extension of the probationary term for one or more additional periods not exceeding in the aggregate six months; provided, however, that the agency head may terminate the employment of the probationer at any time during any such additional period or periods.

(b) Notwithstanding the provisions of paragraphs 5.2.1, 5.2.2 and 5.2.8(a), the probationary term is extended by the number of days when the probationer does not perform the duties of the position, for example: limited duty status, annual leave, sick leave, leave without pay, or use of compensatory time earned in a different job title; provided, however, that the agency head may terminate the employment of the probationer at any time during any such additional period.

CASE NOTES

¶ 1. A probationary police officer was placed on modified duty pending internal investigation into alleged misconduct on her part relating to a homicide at a nightclub. Petitioner's employment was later terminated without a hearing. In an Article 78 proceeding, petitioner argued that, counting the time on modified duty, she had reached the threshold time of two years since her initial appointment, so that she could not be terminated without charges and a

hearing. The court, however, held that under Rule 5.2.8, the probationary period was extended by the time that petitioner spent on modified duty, so that she had not reached the two year threshold and was not protected from termination of employment. The court noted that under the rule, the probationary period was extended "by the number of days when the probationer does not perform the duties of the position." Although the rule gives such items as limited duty and sick leave as examples of acts giving rise to extenstions or probation, the list is not exhaustive. In this case, an officer on modified duty had to surrender his or her shield, firearm and identification card and could not engage in law enforcement. To the extent that the officer was thus restricted, he or she was not performing the duties of the position. Therefore, if petitioner's construction of the law were adopted, the appointing officer would be denied the very purpose of the probationary period, which is to ascertain the fitness of the probationer and give him or her a reasonable oppotunity to demonstrate the ability to perform the duties of the office. Garcia v. Bratton, N.Y.L.J., Oct. 29, 1997, page 28, col. 2 (New York Court of Appeals).

5.2.9. Restoration After Termination. Where the services of a probationer have been terminated, the commissioner of citywide administrative services has the discretion to and may restore the name of such probationer to the eligible list, if it be in existence. Such probationer's name shall be duly certified to other agency heads or to the same agency head if the latter so requests.

5.2.10. Continued Employment Pending Appeal. Whenever a probationer who has been declared not qualified by the commissioner of citywide administrative services for the position held by the probationer files an appeal with the commission, upon the written request of the agency head setting forth the reasons therefor, the probationer's continued employment may be authorized at the discretion of the commissioner of citywide administrative services pending final decision of such appeal; provided, however, that the period of service between such declaration of disqualification and the disposition of the appeal shall not be counted in determining the completion of such probationary term.

5.2.11. Reports to Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services may require an agency head to report in writing on the quality of the performance of any probationer.

SECTION III-PROMOTIONS

5.3.1. General Provisions. (a) Except as otherwise provided, promotion examinations and promotions shall be governed by the rules relating to original appointments.

(b) The provisions of this section shall apply to promotion examinations conducted by the department of citywide administrative services and to non-written promotion examinations conducted by examining agencies.

5.3.2. Limitations On Promotion. (a) No promotion shall be made from one position or title to another position or title unless specifically authorized by the commissioner of citywide administrative services, nor shall a person be promoted to a position or title for which there is required an examination involving essential tests or qualifications different from or higher than those required for the position or title held by such person unless the person has passed the examination and is eligible for appointment to such higher position or title.

(b) An increase in the salary or other compensation of any person holding an office or position in the competitive class beyond the limit fixed for the grade of such position in the classification rules or an advancement from one rank to a higher rank shall be deemed a promotion except as provided otherwise in a labor contract, a labor relations order or personnel order and be subject to the prohibition of this paragraph.

5.3.3. Filling Vacancies by Promotion. (a) Except as provided in paragraph 5.3.5, vacancies in positions in the competitive class shall be filled, so far as practicable, by promotion from among persons holding competitive class positions in a lower grade in the agency in which the vacancy exists, provided that such lower grade positions are in the direct line of promotion, as determined by the commissioner of citywide administrative services.

(b) Where the commissioner of citywide administrative services determines that it is impracticable or against the public interest to limit eligibility for promotion to persons holding lower grade positions in the direct line of promotion, the commissioner of citywide administrative services may extend eligibility for promotion to persons holding:

(1) competitive class positions in lower grades which are determined by the commissioner of citywide administrative services to be in related or collateral lines of promotion; or

(2) comparable positions in any other unit or units of governmental service and may prescribe minimum training and experience qualifications for eligibility for such promotion.

(c) The commissioner of citywide administrative services may open promotion examinations to eligibles, otherwise qualified, in two or more grades who shall have served for the required period in any or all of such grades to which such examination is open. The commissioner of citywide administrative services also may extend eligibility in a promotion examination to persons holding positions of a corresponding character in the same grade as that of the position for which the examination is held. Eligibility shall be limited to persons who meet the requirements prescribed in the announcement of examination.

(d) Agency requests for any extension of eligibility provided for in this paragraph shall be made in accordance with the regulations of the commissioner of citywide administrative services.

5.3.4. Promotion Units. Promotion examinations may be held for such subdivisions of an agency as the commissioner of citywide administrative services may determine to be an appropriate promotion unit. Where promotion examinations are held for a promotion unit in an agency there shall be no certification of agency and citywide promotion eligible lists until after the promotion unit eligible lists for that agency have been exhausted.

5.3.5. Filling Vacancies by Open Competitive Examination. (a) Upon the initiative of the commissioner of citywide administrative services or upon the written request of an agency head stating the reasons therefor the commissioner of citywide administrative services may determine to conduct an open competitive examination for filling a vacancy or vacancies instead of a promotion examination.

(b) An agency head may determine that an open competitive examination should be conducted for filling a vacancy or vacancies in positions within the agency, instead of a promotion examination, subject to the provisions of this paragraph.

(c) Prior to any determination under paragraph 5.3.5(a) or (b) a determination shall be made by the commissioner of citywide administrative services :

(1) whether there are less than three persons eligible for promotion in the promotion unit where the vacancy exists or in the agency, if such vacancy is not in a separate promotion unit; or

(2) whether, in consultation with the agency head, an open competitive and promotion examination should be held simultaneously for vacancies in such positions.

If an affirmative determination is made under this subparagraph (c), the notice provisions of this paragraph shall not apply.

(d) A notice of intention to conduct such open competitive examination or a copy of the agency head's request for an open competitive examination, as the case may be, shall be publicly and conspicuously posted in the offices of both the agency and the department of citywide administrative services, where such determination is made by the commissioner of citywide administrative services under the provisions of 5.3.5(a). The determination or request shall not be acted upon until said notice has been so posted for a period of not less than fifteen days.

(e) A notice of intention to conduct such open competitive examination shall be publicly and conspicuously posted in the offices of the agency, where such determination is made by the agency head under the provisions of 5.3.5(b). Said notice shall be so posted for a period of not less than fifteen days. The agency head's determination and the reasons therefor, in writing, shall have been sent to the commissioner of citywide administrative services simultaneously with such posting.

(f) Any employee who believes that a promotion examination should be held for filling such vacancy, may submit to the commissioner of citywide administrative services and the agency head a request in writing, for a promotion examination rather than an open competitive examination, stating the reasons why such employee believes it to be practicable and in the public interest to fill the vacancy by promotion examination.

(g) The commissioner of citywide administrative services shall decide whether to disapprove an agency determination pursuant to 5.3.5(b) within thirty days of its receipt.

5.3.6. Citywide Lists. The commissioner of citywide administrative services may establish citywide promotion lists which shall not be certified to an agency until after the promotion eligible list for that agency has been exhausted.

5.3.7. Promotion by Non-Competitive Examination. Whenever there are no more than three persons eligible for examination for promotion to a vacant competitive class position, or whenever no more than three persons file applications for examination for promotion to such position, the agency head may nominate one of such persons and such nominee, upon passing an examination appropriate to the duties and responsibilities of the position may be promoted, but no examination shall be required for such promotion where such nominee has already qualified in an examination appropriate to the duties and responsibilities of the position.

5.3.8. Factors in Promotion. Promotion shall be based on merit and fitness as determined by examination. Seniority, previous training and experience of candidates, and performance based on performance evaluation may be considered and given due weight as factors in determining the relative merit and fitness of candidates for promotion.

5.3.9. Credit for Provisional Service. No credit in a promotion examination shall be granted to any person for any time served as a provisional appointee in the position to which promotion is sought or in any similar position, provided, however, such provisional appointee by reason of such provisional appointment shall receive credit in the permanent position from which promotion is sought for such time served in such provisional appointment.

5.3.10. [Deleted 10/19/81]

5.3.11. [Deleted 10/19/81]

5.3.12. Eligibility to Compete in a Promotion Examination: Preferred List or Leave of Absence Status. An employee who has been suspended from a position through no fault of the employee and whose name is on a preferred list, and any employee on leave of absence from a position shall be allowed to compete in a promotion examination for which such employee would otherwise be eligible on the basis of actual service before suspension or leave of absence.

5.3.13. [Deleted 10/19/81]

5.3.14. Eligibility for Certification from a Promotion List. Eligibility for certification by the commissioner of citywide administrative services or head of a certifying agency from a promotion list shall be limited to permanent employees whose names appear on such list who have successfully completed their probationary periods in the eligible title from which promotion is being made.

5.3.15. Eligible List Status of Employees Involuntarily Transferred, Reinstated From a Preferred List or Transferred to Avoid Layoff. Whenever a permanent employee is involuntarily transferred from one agency to another due to a transfer of personnel upon a transfer of functions or whenever such employee is reinstated from a preferred list

to an agency other than the one from which the employee was separated:

(a) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were not given simultaneously nor are they identical, the employee shall be entitled, upon written application, to have his or her name transferred from such agency promotion list upon which it may appear in the first agency and entered upon a corresponding special promotion list for the agency to which such employee was reinstated from the preferred list or was involuntarily transferred. However, such corresponding special promotion list shall not be certified for promotion to such agency until any existing corresponding agency and unit promotion list or lists shall have been exhausted or terminated;

(b) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were given simultaneously and are identical, the said employee shall be entitled upon written application to have his or her name transferred from such agency promotion list upon which it may appear and entered upon the appropriate eligible list in the agency to which such employee was reinstated from the preferred list or was involuntarily transferred based upon the final adjusted mark of such employee;

(c) If both the examination for the agency to which the employee is being transferred and the examination for the agency from which the employee was transferred were given simultaneously and although not identical the commissioner of citywide administrative services has determined that said examinations are comparable, the said employee shall be entitled upon written application to have his or her name transferred from such agency promotion list upon which it may appear and to have his or her name entered upon the appropriate eligible list in the agency to which such employee was reinstated from the preferred list or was involuntarily transferred based upon the final adjusted mark of such employee.

(d) The provisions of this section shall apply to a permanent employee who is transferred either voluntarily or involuntarily to avoid imminent suspension or demotion of employees within an agency due to an abolition or reduction of positions. The determination that suspensions or demotions are imminent shall be made by the commissioner of citywide administrative services.

(e) Where employees in the second agency, in the same title as the transferred employees provided for in this section, would have been eligible to participate in a promotion examination given at the same time as the one given to such transferred employees, but no such promotion examination was given, the provisions of this section shall not apply to such transferred employees.

5.3.16. Provisions for Promotion in the Correction, Fire, Housing Police, Police, Rapid Transit Railroad and Transit Police Services. (a) The provisions of paragraph 5.3.14 shall not be applicable in the case of promotion examinations and promotions in the correction, fire, police, and rapid transit railroad services.

(b) Eligibility to compete promotion examinations for positions in the rapid transit railroad service shall be limited to employees, otherwise qualified, who have served permanently in the eligible title or titles for a period of not less than one year if the examination is for a position in group II or for a period of not less than six months if the examination is for a position in group I, except as otherwise provided by law or rule or fixed in the notice of examination.

(c) In examinations for promotion to positions in the police, fire, rapid transit railroad, transit police, housing police and correction services, the method of rating seniority and performance and the terms and conditions of eligibility for competition and promotion therefor shall be set forth in the announcement of examination.

SECTION IV-TEMPORARY APPOINTMENTS

5.4.1. Temporary Appointments from Eligible Lists. (a) A temporary appointment for a period not exceeding three months, where the need therefor is important and urgent, may be made without regard to existing eligible lists.

(b) A temporary appointment for a period exceeding three months but not exceeding six months may be made by the selection of a person from an appropriate eligible list, if available, without regard to the relative standing of such person on such list.

(c) Any further temporary appointment beyond such six-month period or any temporary appointment originally made for a period exceeding six months shall be made by the selection of an appointee from among those graded highest on an appropriate eligible list, if available, upon certification thereof by the commissioner of citywide administrative services to the agency head in the manner prescribed in the rules for certification and appointment from eligible lists, provided however, that:

(1) such appointee may be withheld from certification at the request of the agency head for a period of four months or for the duration of such employment, whichever period is shorter.

(2) This limitation, however, shall not apply during the last four months of the life of such eligible list.

(d) The head of a certifying agency shall certify eligible lists for classes of positions unique to the agency pursuant to the provisions of this section and shall report thereon as prescribed by the commissioner of citywide administrative services.

5.4.2. Temporary Appointments Exceeding One Month Duration. (a) Temporary appointment may be made to a position when an employee is on leave of absence from such position for a period not exceeding the duly authorized duration of such leave of absence.

(b) Temporary appointment may be made for a period not exceeding six months when the commissioner of citywide administrative services shall find, upon due inquiry, that the position to which such appointment is proposed will not continue in existence for a longer period; provided, however, that where such appointment is made and it subsequently develops that such position will remain in existence beyond such six-month period such temporary appointment may be extended with the approval of the commissioner of citywide administrative services for a further period not to exceed an additional six months.

5.4.3. Successive Temporary Appointments. Except as otherwise provided, successive temporary appointments pursuant to paragraphs 5.4.1 or 5.4.2 shall not be made to the same position after the expiration of the authorized period of the original temporary appointment to such position.

5.4.4. Effect of Temporary Appointment on Promotion Eligibility. Any employee who is appointed or promoted to a position left temporarily vacant by the leave of absence of the permanent incumbent thereof(pursuant to rule 5.4.2) after having qualified therefor in the same manner as required for permanent appointment or promotion thereto, shall have all the rights and benefits with respect to promotion eligibility of permanent status.

SECTION V-PROVISIONAL APPOINTMENTS

5.5.1. Appointment Requirements. Whenever there is no appropriate eligible list available for filling a vacancy in the competitive class, the agency head may nominate a person to the commissioner of citywide administrative services for non-competitive examination, and:

(a) if such nominee shall be certified by the commissioner of citywide administrative services as qualified after such non-competitive examination, the nominee may be appointed provisionally to fill such vacancy until a selection and appointment can be made after competitive examination;

(b) such non-competitive examination may consist of a review and evaluation of the training, experience and other qualifications of the nominee without written, oral or other performance tests.

5.5.2. Duration. A provisional appointment shall not continue for a period in excess of nine months.

5.5.3. Termination. A provisional appointment to any position shall be terminated within two months following the establishment of an appropriate eligible list for filling vacancies in such positions; provided, however, that:

(a) when there is a large number of provisional appointees in any agency to be replaced by permanent appointees from a newly established eligible list and the agency head deems that the termination of the employment of all such provisional appointees within two months following the establishment of such list would disrupt or impair essential public services, evidence thereof may be presented to the commissioner of citywide administrative services; and

(b) after due inquiry, and upon finding that it is in the best interests of the public service, the commissioner of citywide administrative services may thereupon waive the provision of this paragraph requiring the termination of the employment of provisional appointees within two months following the establishment of an appropriate eligible list and authorize the termination of the employment of various numbers of such provisional appointees at prescribed stated intervals;

(c) in no case however shall the employment of such provisional appointee be continued longer than four months following the establishment of such eligible list.

5.5.4. Successive Provisional Appointments. (a) Successive provisional appointments shall not be made to the same position after the expiration of the authorized period of the original provisional appointment to such position except as provided in this paragraph.

(b) Where an examination for a position or group of positions fails to produce a list adequate to fill all positions then held on a provisional basis, or where such list is exhausted immediately following its establishment, a new provisional appointment may be made to any such position remaining untilled by permanent appointment. Such new provisional appointment may, in the discretion of the agency head, be given to a current or former provisional appointee in such position, except that a current or former provisional appointee who becomes eligible for permanent appointment to any such position shall, if he is then to be continued in or appointed to any such position be afforded permanent appointment to such position.

5.5.5. Credit for Provisional Service. The commissioner of citywide administrative services may, by regulation, provide a suitable method for the computation of experience credit for provisional service in open competitive or labor class examinations.

5.5.6. Review of Provisional Appointments. The commissioner of citywide administrative services shall review any appointments of persons as provisional employees within sixty days after appointment to assure compliance with the New York City charter, the civil service law and other applicable law and the rules and regulations of the commissioner of citywide administrative services.

SECTION VI-SEASONAL APPOINTMENTS

5.6.1. Seasonal Appointments Authorized. All positions in the competitive class, where the nature of the service is such that it is not continuous throughout the year, but recurs in each successive calendar year, may be designated by the commissioner of citywide administrative services as seasonal positions and appointments thereto shall be designated as seasonal appointments.

5.6.2. Seasonal Re-employment Roster. (a) At the end of an employment season, the names of all persons employed during such season or major portion thereof shall be entered upon a seasonal re-employment roster in the order of their first appointment to the title vacated by them on the expiration of such employment season provided that:

(1) the services rendered by such persons shall have been certified as satisfactory during such season or major

portion thereof by the agency head; and

(2) they are otherwise still qualified.

(b) The names of the persons appearing on such roster shall be certified in numerical order during the next succeeding season to an agency head upon that official's request for seasonal re-employment in the positions previously held by such persons or similar positions.

(c) The qualifications of any such person may be further reviewed by the commissioner of citywide administrative services with respect to such person's continuing fitness to perform the required duties and such person may be disqualified for re-employment in the same manner and for any of the reasons applicable to disqualification for permanent employment.

5.6.3. Effect Upon Status. Such seasonal re-employment roster shall in no event be deemed to be a preferred eligible list and persons employed in seasonal positions shall acquire no civil service status or right or privilege other than is set forth in this section.

SECTION VII-EXCEPTIONAL APPOINTMENTS

5.7.1. Temporary Appointments Without Examination in Exceptional Cases. (a) The commissioner of citywide administrative services may authorize a temporary appointment, without examination, when the person appointed will render professional, scientific, technical or other expert services:

(1) on an occasional basis; or

(2) on a full-time or regular part-time basis in a temporary position established to conduct a special study or project for a period not exceeding eighteen months.

(b) Such appointment may be authorized only in a case where because of the nature of the services to be rendered and the temporary or occasional character of such services it would not be practicable to hold an examination of any kind.

5.7.2. [Deleted 7/8/80]

5.7.3. Records. All exceptions made pursuant to this section shall be recorded by the commissioner of citywide administrative services.

5.7.4. Effect Upon Status. Persons engaged for employment pursuant to this section shall acquire no civil service status or right or privilege of tenure other than those set forth herein.

5.7.5. City Services Aides. Appointments to positions in the title city services aide title code no. 91405 which are paid on a per diem basis entirely from state and/or federal funds and are designed for the purpose of training individuals for specific skills and/or providing work opportunity in accordance with the provisions of an agreement between the City of New York or one of its agencies or authorities and the New York State or federal agency involved, shall be designated as exceptional appointments. Such appointments shall be made after authorization by the commissioner of citywide administrative services and in accordance with the terms and conditions of the appropriate agreement and for a period not to exceed eighteen months.

Appointments to positions in the title city services aide title code no. 91405 which are needed to perform or directly supervise the performance of general work requiring little or no experience or education and which result from a natural or humankind emergency that has been declared by the mayor, shall also be designated as exceptional appointments. Such per diem appointments shall be made after authorization by the commissioner of citywide administrative services and shall exist for the duration of the emergency, not to exceed a total of six months.

SECTION VIII-TRAINEE OR AIDE APPOINTMENTS

5.8.1. Trainee or Aide Appointments Authorized; Conditions. The commissioner of citywide administrative services may require that permanent appointments to designated positions in the competitive class shall be conditioned upon the satisfactory completion of a period of service as a trainee or aide in an appropriate lower, trainee or aide position in such class and/or, where required, the completion of specified formal courses of training.

(a) The period of such trainee or aide service shall be prescribed and set forth in the announcement of examination.

(b) Upon the satisfactory completion of such trainee or aide service and/or of specified formal courses of training, as the case may be, an appointee shall attain permanent status in the designated position.

(c) Any trainee or aide appointment shall be subject to such probationary term as is prescribed in the rules.

(d) The employment of such trainee or aide may be terminated at the end of the period of the trainee or aide service, or at any time within such period, if the trainee's or aide's conduct, capacity or fitness is not satisfactory or if such person fails to pursue or to continue satisfactorily such formal courses as may be required, provided, however, that the announcement of examination shall set forth appropriate information relative to such termination.

5.8.2. Effect of Service in a Trainee Title Upon Probationary Period in the Permanent Title. If, in the opinion of the agency head, an appointee conclusively demonstrates during service in a trainee title ability and fitness to perform the duties of the permanent title to which the appointee is thereafter assigned, completion of service in the trainee title, in the discretion of the agency head, may be deemed to be satisfactory completion of the probationary period in the permanent title, provided that the agency head files a written statement to that effect with the department of citywide administrative services at the time of such assignment to the permanent title.

RULE VI-PERSONNEL CHANGES

SECTION I-TRANSFERS

6.1.1. General Provisions. Except as provided in paragraph 6.1.9 of this section, an employee shall not be transferred to a position for which there is required an examination involving essential tests or qualifications different from or higher than those required for the position held by such employee.

6.1.2. Functional Transfers. Upon the transfer of a function from one agency to another agency, the permanent employees in the competitive or labor class so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classification and status as employees in such new agency in accordance with the provisions of law governing functional transfers.

6.1.3. General Requirements. Every transfer, other than a functional transfer, shall require the consent, in writing, of the proposed transferee and of the respective heads of the agencies concerned therewith and the approval of the commissioner of citywide administrative services.

6.1.4. Existing Eligible Lists, Restriction. A transfer, other than a functional transfer, shall not be approved to a position for which an adequate appropriate preferred or agency promotion list exists, except as provided for in paragraph 6.1.5 of this section.

6.1.5. Special Transfer Lists. Whenever it is determined to the satisfaction of the commissioner of citywide administrative services that the abolition of a permanent position in the competitive class is imminent:

(a) the head of the agency in which such position exists shall furnish forthwith to the commissioner of citywide administrative services the name, title, date of original appointment and the salary of the employee expected to be suspended; and

(b) the commissioner of citywide administrative services shall thereupon establish a special transfer list for such title and shall place the name of such employee thereon in the order of original appointment as though suspended in accordance with section eighty of the civil service law; and

(c) for a period not exceeding six months prior to the prospective abolition of such position, an employee whose name appears on such special transfer list shall be eligible for the filling of vacancies in the same or similar position before certification is made from any open competitive or promotion list; and

(d) the name of any employee appearing on such special transfer list who is not so transferred prior to the abolition of such employee's position shall be placed on an appropriate preferred list pursuant to section eighty-one of the civil service law.

6.1.6. Eligibility of Probationers for Transfer. An employee on probation shall be eligible for transfer; provided however, that:

(a) if such transfer is voluntary such employee shall serve the entire period of probation on the job in a pay status in the new position in the same manner and subject to the same conditions as required upon such employee's employment in the position from which transfer is made, and in accordance with the provisions of paragraph 5.2.1;

(b) if such employee is involuntarily transferred from one agency to another due to a transfer of personnel upon a transfer of function, or if such employee transfers voluntarily to avoid layoff resulting from a reduction in force, then, in either of such events, such employee shall receive credit for the period of time already served on probation.

CASE NOTES

¶ 1. An employee of the Sanitation Department serving a one-year disciplinary probation period and faced with a layoff for economic reasons opts to transfer to Triborough Bridge and Tunnel Authority employment. Petitioner was notified that his transfer was subject to City Personnel Director's rules governing transfers which provides that a probationary employee voluntarily agreeing to a transfer to avoid a layoff is subject to the employee completing any probationary period then being served, 13 RCNY, title 59, Appendix A, rule 6.1.6. In this case the employee had nine months probationary service left and when he incurred further disciplinary measures during that time he was properly dismissed. Jackson v. Triborough Bridge, 155 Misc. 2d 715 [1993].

6.1.7. Assignment During Period of Disability. An employee who has incurred a disability which prevents the employee from performing the normal duties of the position may be assigned during the period of such disability to other appropriate duties for which the employee is deemed duly qualified as determined by the commissioner of citywide administrative services.

6.1.8. Transfers: Other Jurisdictions. Transfers between positions subject to the jurisdiction of the commissioner of citywide administrative services and positions subject to the jurisdiction of the state civil service commission, the administrative board of the judicial conference or any other municipal civil service commission in the state may be approved by the commissioner of citywide administrative services, provided that the state civil service commission, the administrative board of the judicial conference or other municipal civil service commission has adopted reciprocal rules therefor and approves such transfers.

6.1.9. Transfer and Change of Title. Notwithstanding the provisions paragraph 6.1.1 of this section or any other provision of law, any permanent employee in the competitive class who meets all of the requirements for a competitive examination, and is otherwise qualified as determined by the commissioner of citywide administrative services, shall be eligible for participation in a non-competitive examination in a different position classification provided, however, that such employee is holding a position in a similar grade.

SECTION II-REINSTATEMENTS

6.2.1. General Provisions. (a) An employee who has completed a probationary term in a permanent position in the competitive or labor class, and who has resigned or retired therefrom may be reinstated with the approval of the commissioner of citywide administrative services to:

(1) the position from which the employee has resigned or retired, if vacant, or to any similar vacant position in the agency in which the employee was employed; or

(2) to a position in another agency to which the employee would have been eligible for transfer.

(b) Such reinstatement may be made only if the separation from employment was without fault or delinquency on the employee's part and the head of the agency to whom the employee has applied for such reinstatement is willing to reinstate the employee.

6.2.2. General Conditions. (a) Such reinstatement shall be subject to the provisions of this section and shall be made without further examination except that the employee reinstated under this section may be subject to such probationary period, investigation, medical or other qualifying tests or requirements as the commissioner of citywide administrative services shall determine.

(b) The head of the agency wherein such reinstatement occurs may elect to waive the requirement of satisfactory completion of the probationary term at any time during such term.

6.2.3. Period of Eligibility for Reinstatement. (a) Such reinstatement must be accomplished within a period of time equivalent to the time the employee has actually served in the civil service of New York City, but in no event shall such period for reinstatement be less than one year nor more than four years from the date of resignation or retirement provided, however, that:

(1) the commissioner of citywide administrative services may fix a period equal to or twice the period actually served, but in no event less than one year nor more than four years within which an employee may be reinstated for designated classes of positions, where the commissioner of citywide administrative services determines that there is a lack of a sufficient number of qualified persons available for recruitment; and

(2) the commissioner of citywide administrative services shall annually re-examine the reason for establishing such period for reinstatement and shall revoke the prior determination upon a finding that there is a sufficient number of qualified persons available for recruitment.

(b) In computing the aforementioned time limitation, any time subsequent to separation spent in active service in the armed forces of the United States or of the State of New York resulting in discharge under honorable conditions and any time spent subsequent to separation in another position in the civil service of the city shall not be considered.

(c) Notwithstanding the foregoing provisions of this paragraph, with respect to members of the uniformed forces of the police and fire departments, the uniformed force of the New York City transit authority police department, and the uniformed force of the police department of the New York City housing authority, such reinstatement must be applied for by the former employee within a period of one year from the date of resignation or retirement.

6.2.4. Effect on Continuous Service. Any such reinstatement effected more than one year after such separation shall not constitute continuous service.

6.2.5. Reinstatement After Separation for Disability. (a) Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the workers' compensation law, such employee shall be entitled to a leave of absence for at least one year unless the disability is of such a nature as to permanently incapacitate the employee from the performance of the duties of the position.

(b) Such employee may, within one year after the termination of such disability, make application to the commissioner of citywide administrative services for a medical examination to be conducted by a medical examiner selected by the commissioner of citywide administrative services. If, upon such examination, such examiner shall certify that such person is physically and mentally fit to perform the duties of the former position, such person shall be reinstated to it, if vacant, or to a vacancy in a similar or lower position in the same occupational field or to a vacant position for which such person was eligible for transfer.

(c) If no appropriate vacancy shall exist to which reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed upon a preferred list for the person's former or similar position, and such person shall be eligible for reinstatement therefrom for a period of four years from the date of medical and physical qualification. In the event that such person is reinstated to a position in a lower grade, the person's name shall likewise be placed on a preferred list.

(d) This paragraph shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

6.2.6. Reinstatement of Dismissed Employee. (a) An agency under the jurisdiction of the commissioner of citywide administrative services, upon written application for reinstatement by a person who was dismissed from a permanent competitive or labor class position in such agency, which sets forth the reasons for requesting an opportunity of making a further explanation, may consider such application.

(b) If the agency shall determine that such application and explanation are meritorious, it may, in its discretion and with the approval of the commissioner of citywide administrative services, reinstate such person; provided however, that:

(1) such person shall be eligible for reinstatement for a period of one year only from the date of dismissal; and

(2) such person shall execute a prescribed waiver, in writing, with respect to claims for back pay, civil service rights and status for the period of the dismissal.

6.2.7. Other City Service. A permanent competitive class employee, separated from a position by appointment or promotion to another position in the unclassified or classified service of the city and who has served continuously therein, shall be eligible for instatement to the competitive class position formerly held by the employee or to another similar position or lower position in the same or similar occupational group or service.

CASE NOTES

¶ 1. This rule states that permanent City employees who are appointed or promoted to another position, and who have served continuously, are eligible for reinstatement to the former position. This provision merely gives the City agency discretion to reinstate the employee, and absent an abuse of discretion, the court will not interfere with the agency's decision to deny reinstatement. Bethel v. McGrath-McKechnie, 95 N.Y.2d 7, 709 N.Y.S.2d 888 (2000).

SECTION III-VOLUNTARY DEMOTIONS

6.3.1. General Provisions. No permanent competitive class employee shall be demoted unless such employee consents thereto in writing. The agency head concerned shall transmit to the commissioner of citywide administrative services such consent together with a statement of the reasons therefor. This paragraph shall not be applicable to penalties of demotion resulting from disciplinary proceedings.

6.3.2. Restoration. A person who has been demoted may, upon written request by the agency head concerned, be restored to such person's former position or a similar position, with the approval of the commissioner of citywide administrative services.

SECTION IV-REMOVAL AND OTHER DISCIPLINARY ACTION

6.4.1. Removal Notification to Department of Citywide Administrative Services. Where a person has been removed from a position for cause, a copy of the reasons therefor together with a copy of the proceedings thereon shall be transmitted to the department of citywide administrative services.

6.4.2. Service of Charges and Determination. (a) Where the employee is a resident of the city, a copy of charges preferred in a disciplinary action pursuant to sections seventy-five and seventy-six of the civil service law shall be served in person upon the employee thus charged.

(b) Where personal service cannot be made or where the employee is not a resident of the city, it shall be sufficient for the agency head to serve such charges by registered mail to the last known address of such person. Where service is made by registered mail such person shall be allowed an additional three days in which to answer or otherwise appear.

(c) Service by the agency head of written notice of determination to be reviewed pursuant to sections seventy-five and seventy-six of the civil service law shall be sufficient if such written notice is delivered personally or by registered mail to the last known address of such person and when notice is given by registered mail such person shall be allowed an additional three days in which to file such appeal.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A single unsuccessful attempt at 8:05 a.m. on a Friday to serve the petition personally on the respondent employee at her residence in the city does not demonstrate that personal service cannot be made, as required by paragraph (b) of this rule. Human Resources Administration v. Rice, OATH Index No. 455/93 (Mar. 1, 1993).

¶ 2. Failure to comply with the service requirements of this rule is not fatal where the employee received actual notice of the disciplinary charges. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 3. Where an employee deliberately evaded attempts to serve him personally with disciplinary charges, the employee was estopped from asserting that personal service was not made pursuant to paragraph (a) of this rule. In any event, service by Federal Express delivery and by regular and certified mail, after the unsuccessful attempts at personal service, were sufficient under paragraph (b) of this rule. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 4. Administrative law judge found service at a foreign address where respondent instructed the agency to send his mail was sufficient to give respondent actual notice of the proceeding. **Dep't of Environmental Protection v. Zaza,** OATH Index No. 516/99 (Oct. 16, 1998).

¶ 5. Service of petition and notice of trial by certified mail sent to respondent's address of record is sufficient for non-city resident. **Dep't of Homeless Services v. Edwards,** OATH Index No. 1688/98 (June 26, 1998).

¶ 6. Respondent was properly served with charges where they were handed to him at the workplace by a secretary, where he took them, and looked at them without reading them and placed them on the secretary's desk. **Human Resources Admin. v. Morris,** OATH Index No. 1683/95 (May 6, 1998).

¶ 7. Evidence showed that respondent actually received the notice of hearing, when he opened it, saw it was meant for him, but treated it as a nullity and returned it to the Department because it incorrectly listed his personnel captain as the addressee. Administrative law judge found that respondent was properly served where Department complied with Personnel Director's rules for service in disciplinary proceedings by attempting personal service at respondent's last known address and thereafter mailing a copy of the charges and notice of hearing to that address. **Dep't of Correction v. Winkfield**, OATH Index No. 2219/99 (Sept. 21, 1999).

¶ 8. Indication on personnel papers that respondent's absence was originally due to "incarceration" raised question of whether proper service of charges was made. Evidence showed that personal service on admitted relative of respondent at last known address was accomplished prior to hearing. Administrative law judge determined that service was sufficient to afford respondent opportunity to communicate with counsel or the agency prior to date of hearing. **Human Resources Admin. v. Hartley,** OATH Index No. 1829/99 (June 9, 1999).

¶ 9. Agency served a new charge by electronic facsimile upon the employee's attorney, without serving the employee himself. Although Personnel Director's Rule 6.4.2 requires personal service of disciplinary charges on the employee, the rule has not been held to require personal service of amendments to charges, made after the employee has already been personally served with the initial charges and the attorney has appeared in the case. Under these circumstances, the administrative law judge found that there was no prejudice to respondent, that he had a fair opportunity to litigate the issue of the bribe, and that the motion to amend should therefore be granted. **Dep't of Sanitation v. Vaughan,** OATH Index No. 2234/99 (Feb. 15, 2000), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD00-100-SA (Nov. 15, 2000).

¶ 10. Motion to dismiss complaints granted where administrative law judge found that complaints were not left with employee who refused to sign statement acknowledging their receipt. **Dep't of Sanitation v. Yovino**, OATH Index No. 992/04, mem. dec. (Aug. 11, 2004).

¶ 11. Attempted personal service of charges at respondent's home address held to comply with the City Personnel Director's rule, notwithstanding that petitioner's employees were aware of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Rinehard**, OATH Index No. 647/05 (Oct. 21, 2004).

6.4.3. Absence Without Leave. (a) When an employee is absent without leave and fails to communicate with the department in which employed in the manner prescribed by that department for a period of twenty consecutive work days, such absence shall be deemed to constitute a resignation effective on the date of its commencement unless the appointing officer, at the discretion of that officer, accepts an explanation for such unauthorized absence.

(b) In the case of an employee covered by the provisions of section seventy-five of the civil service law such absence shall constitute a cause for action against such employee under and subject to the provisions of that section.

SECTION V-ABOLITION OF POSITION, SUSPENSION,

DEMOTION, PREFERRED LISTS

6.5.1. Suspension or Demotion. The suspension or demotion of competitive class employees upon the abolition or reduction of positions shall be governed by the provisions of section eighty of the civil service law.

6.5.2. Units for Suspension or Demotion. (a) The commissioner of citywide administrative services may, by rule, designate as separate units for suspension or demotion under this section, any institution or any division of any agency.

(b) There are hereby designated within the department of health the following separate units for suspension or demotion:

(1) urine testing laboratory of the methadone maintenance treatment program;

(2) Williamsburg methadone maintenance clinic of the methadone maintenance treatment program;

(3) evaluation and control unit of the methadone maintenance treatment program.

(c) There are hereby designated within the department of mental health, mental retardation and alcoholism services the following separate units for suspension and demotion:

(1) criminal and supreme court mental health program;

(2) family court mental health program.

(d) There are hereby designated within the department of citywide administrative services the following separate units for suspension or demotion:

(1) executive offices, which shall include the commissioner's office, office of the general counsel, office of technology and information services, office of fleet administration and transportation and office of external affairs and communications;

(2) offices of the chief financial officer and the chief administrative officer;

(3) office of administrative trials and hearings;

(4) division of facilities management and construction services;

(5) division of municipal supply services;

(6) division of real estate services;

(7) division of citywide personnel services.

(e) There are hereby designated within the department of housing preservation and development the following units for suspension or demotion:

(1) office of property management;

(2) office of development;

(3) office of rent and housing maintenance;

(4) office of central administration.

(f) There are hereby designated within the Department of Finance the following units for suspension or demotion:

(1) Department of Finance;

(2) Tax Appeals Tribunal.

6.5.3. Preferred Lists; Certification and Reinstatement. In the event of suspension or demotion, preferred lists and certification and reinstatement therefrom shall be governed by the provisions of section eighty-one of the civil service law.

6.5.4. Effect of Failure or Refusal to Accept Reinstatement. (a) The failure or refusal of a person on a preferred list to accept reinstatement therefrom to the person's former position, or any comparable position in a comparable salary or salary range for which such list is certified, shall be deemed to be relinquishment of eligibility for reinstatement, and such person's name shall thereupon be stricken from such preferred list.

(b) The name of such person may be restored to such preferred list, and certified to fill such appropriate vacancies as may thereafter occur, only upon the written request of such person containing a submission of reasons satisfactory to the commissioner of citywide administrative services for the previous failure or refusal to accept reinstatement.

6.5.5. Labor Class. Whenever in any agency a position in the labor class is abolished or made unnecessary in any

manner, or whenever the number of such positions is reduced, the permanent employee in such position shall be deemed suspended without pay and such employee's name shall be placed upon a preferred list for certification to appropriate vacancies for a period of one year from the date of suspension in the same manner as provided by sections eighty and eighty-one of the civil service law for the competitive class.

SECTION VI-EDUCATIONAL LEAVE OF ABSENCE

UNDER THE MILITARY LAW

6.6.1. Certification. In the event an employee on an educational leave of absence pursuant to the military law is on an eligible list and is certified but passed over for appointment from such a list during the period of absence, such employee shall not be charged with the certification.

6.6.2. Seniority. The seniority of an employee on educational leave of absence pursuant to the military law shall accrue for purpose of suspension pursuant to section eighty of the civil service law during the period of such absence and the employee may in the same manner as all regular candidates file for and compete in any scheduled promotion examination held during the period of absence for which the employee meets the eligibility requirements, but inability to file or to appear for the examination at the regularly scheduled time and place because of such absence shall not be sufficient grounds for granting a special examination.

6.6.3. Probation. Whenever an employee shall have been granted an educational leave of absence pursuant to the military law prior to the completion of the probationary term prescribed by these rules, such probationary term shall not continue to run during the period of absence, but the employee shall be required to serve the remainder of such prescribed term upon return to active duty in pay status in city service before the employment shall be considered permanent.

6.6.4. Performance Rating or Evaluation. No performance rating or evaluation shall be assignable to an employee on an educational leave of absence pursuant to the military law unless such employee shall have served at least three months on active duty in pay status in city service during a rating or evaluation period as prescribed by the rules or regulations governing performance ratings or evaluation.

RULE VII-GENERAL PERSONNEL ADMINISTRATION

SECTION I-MAINTENANCE OF ROSTERS, ADDRESSES

AND RECORDS

7.1.1. Roster. The department of citywide administrative services shall maintain an official roster of the classified service, setting forth in detail the employment listing of each employee and each change of status from the time the employee enters service until separation therefrom.

7.1.2. Address. (a) Each officer or employee in the classified service shall, upon appointment or promotion, notify the agency head of his or her address. Such officer or employee shall likewise inform the agency head of any change of address during the period of employment.

(b) A candidate for examination or an eligible on a list shall promptly notify the department of personnel and the examining or certifying agency, as the case may be, of any change of address which occurs between the time of filing the application and the expiration of the eligible list upon which such person's name appears.

(c) Any communication or service to the last address thus furnished shall be deemed a valid and sufficient communication of service upon such person.

7.1.3. Records. Personnel records created and maintained by each agency shall include such records as prescribed

by the commissioner of citywide administrative services to be maintained by the agency or submitted to the department of citywide administrative services.

SECTION II-CERTIFICATION OF PAYROLLS

7.2.1. Certification. Payrolls shall not be certified except upon declaration by the agency submitting them to the commissioner of citywide administrative services that the persons named therein are employed in their respective positions in accordance with law and the rules and regulations adopted pursuant thereto. The payroll of any person whose employment is in contravention of the foregoing provision shall not be certified by the commissioner of citywide administrative services.

7.2.2. Notification. Notification prior to each action or decision of an agency pursuant to chapter thirty-five of the New York City charter which changes the status of an individual employee, a position or a class of positions shall be provided by the agency to the commissioner of citywide administrative services.

7.2.3. Additional Employment. Except as otherwise provided by law, no person receiving remuneration from employment in a position in the classified service shall be eligible to receive remuneration for employment in any additional position or positions in the civil service of the city or in the civil service of any other governmental agency or jurisdiction unless the agency head or heads concerned shall certify that such additional employment or employments are not in violation of any law, rule or regulation and that such additional employment or employments are not incompatible with the position held by such person.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent found to have violated rule 7.2.3 by not filing a dual employment request form where respondent simultaneously worked for the Board of Education and the Department of Homeless Services. **Dep't of Homeless Services v. Perry,** OATH Index No. 2221/00 (Sept. 11, 2000).

SECTION III-POSITION CLASSIFICATION AND ALLOCATION

7.3.1. Position Classification. (a) The commissioner of citywide administrative services shall, in accordance with the law and rules, duly classify and reclassify positions in the city service and shall prescribe regulations and procedures therefor.

(b) Agencies shall participate, in accordance with the provisions of this paragraph, with the department of citywide administrative services in job analyses for classification of positions and shall assist in setting the minimum requirements therefor.

7.3.2. Position Allocation: Existing Titles. (a) Any new or existing positions which are allocated by an agency to a title of an existing class of positions shall be appropriate to the duties and responsibilities of such title and conform to the class specifications therefor.

(b) Agency allocations of such positions shall be made in accordance with these rules and with the standards set forth in the regulations or otherwise prescribed by the commissioner of citywide administrative services.

7.3.3. Position Allocation: New Class of Positions. (a) If a new position is to be allocated by an agency to a new class of positions, the agency head shall request of the commissioner of citywide administrative services, and the commissioner of citywide administrative services shall furnish to the agency head and the commissioner of finance, a certificate stating:

(1) the appropriate civil service title for the proposed position;

(2) the range of salary of comparable civil service positions;

(3) a statement of required class specifications and line of promotion, if any, into which such new position shall be placed.

(b) Any such new position shall be created only with the title approved by the commissioner of citywide administrative services and in accordance with the rules.

SECTION IV-MANAGEMENT SERVICE (RESERVED)

SECTION V-PERFORMANCE EVALUATION FOR

SUB-MANAGERIAL EMPLOYEES

7.5.1. Agency Performance Evaluation Programs. Each agency shall establish and administer a performance evaluation program for sub-managerial employees in accordance with these rules or as prescribed by the commissioner of citywide administrative services in the regulations or procedures. Such programs shall be subject to approval by the commissioner of citywide administrative services.

7.5.2. Definition. The performance evaluations of all sub-managerial employees, other than members of the uniformed forces of the police, fire, transit police, housing police, correction services and operating staff of the independent authorities, shall be based upon evidence of the work actually performed by such employees as compared with pre-established performance standards.

7.5.3. Use. Performance evaluations of sub-managerial employees shall be used by agencies during the probationary period and for promotions, assignments, incentives and training.

7.5.4. General Administration. (a) Each agency shall establish and maintain an employee service board to oversee the operation and effectiveness of the agency's sub-managerial performance evaluation program.

(b) Rating criteria in the form of performance standards shall be developed through a process of job analysis that will include consultation with employees to be evaluated.

(c) Sub-managerial employees shall be rated by supervisors who directly observe and/or review their work. All such evaluations shall be reviewed by a superior who is at least one level above that of the evaluator.

(d) Final evaluations shall be issued by the agency's employee service board subject to review by the agency head.

(e) Sub-managerial employees shall receive at least one performance evaluation a year and shall be informed in writing at the beginning of the evaluation period of the performance standards that are to be used as the basis for evaluation. All such employees shall be shown their evaluation reports.

7.5.5. Appeals. (a) Each agency shall establish and maintain an appeals board which shall determine appeals by permanent sub-managerial employees of their performance evaluations.

(b) The determination of the appeals board may be appealed by such permanent employee to the head of the agency.

(c) Procedures for such appeals shall be contained in the sub-managerial performance evaluation program submitted by the agency to the commissioner of citywide administrative services.

7.5.6. Sub-Managerial Performance Evaluations for Probationary Employees. (a) Interim evaluations shall be made for sub-managerial probationary employees at least every three months and a final report shall be made at the end of the probationary period. Each interim evaluation shall contain a recommendation that the probationary employee either be retained for an additional three-month period or terminated from the position.

(b) Such probationary employee shall not have the right to appeal a performance evaluation but any unsatisfactory interim reports and all final probationary reports shall be reviewed by the agency's employee service board.

7.5.7. Notices. Each agency shall publicize in a timely fashion any salary increases, other monetary rewards or assignments which result from sub-managerial performance evaluations. The names of employees who receive overall ratings above satisfactory shall also be made public.

SECTION VI-PERSONNEL PROGRAMS FOR

EMPLOYEE INCENTIVES AND RECOGNITION,

TRAINING AND SAFETY

7.6.1. Employee Incentives and Recognition. (a) The commissioner of citywide administrative services shall administer citywide employee incentive and recognition programs.

(b) Agency plans and programs for agency employee incentive and recognition shall be prepared and submitted to the commissioner of citywide administrative services for approval in accordance with the regulations or as otherwise prescribed by the commissioner of citywide administrative services.

7.6.2. Employee Training and Development. Employee training and development programs shall be conducted on a citywide basis by the department of citywide administrative services and on an individual agency basis by agencies.

7.6.3. Employee Safety. Employee safety programs shall be administered on a citywide basis by the department of citywide administrative services and on an individual agency basis by agencies.

7.6.4. General Provisions. (a) Standards for the personnel programs described in this section shall be as prescribed by the commissioner of citywide administrative services.

(b) Personnel programs which are of a citywide nature or which are such that administration by separate agencies would be impracticable and uneconomical shall be administered by the commissioner of citywide administrative services.

SECTION VII-EQUAL EMPLOYMENT OPPORTUNITY

7.7.1. Equal Employment Opportunity. Equal employment opportunity programs administered by the department of citywide administrative services and by agencies shall ensure and promote equal opportunity in employment.

RULE VIII-APPEALS

SECTION I-DEPARTMENT OF CITYWIDE

ADMINISTRATIVE SERVICES ACTIONS

8.1.1. Procedures for Claim of Manifest Error or Mistake-Examinations. (a) Except as otherwise provided by resolution or regulation of the commissioner of citywide administrative services, whenever a claim of manifest error or mistake is made, such claim shall be referred to a committee on manifest errors. This committee shall consist of three qualified persons designated as members thereof by the commissioner of citywide administrative services, which committee shall either have as a member or consult with an expert in the subject matter with which such claim is concerned. A claim of manifest error or mistake shall open for review the candidate's answers to all the questions in the examination. Such review may result in a higher or lower final rating.

(b) Such committee shall inquire into the merits of each claim and shall submit the signed determination of each

member as to whether or not there has been a manifest error or mistake together with such correction or remedy, if any, as may be recom- mended.

(c) Except as hereafter provided, such claim of manifest error or mistake must be made in writing by the candidate within one month from the date of notice to the candidate of the results of such examination, tests, subjects or parts thereof.

(d) Whenever a claim of manifest error or mistake is made in connection with the rejection of a candidate because the candidate has failed to meet the preliminary requirements of such examination, such claim must be made in writing by the candidate within two weeks following the date upon which notice was transmitted to the candidate of such rejection.

(e) Whenever a claim of manifest error or mistake is made by a person on an eligible list who has been rejected after investigation because such person has failed to meet the preliminary requirements of such examination, such claim must be made in writing by the person within two weeks following the date upon which notice was transmitted to the person of such rejection.

(f) Any correction of manifest error or mistake shall be without prejudice to the status of any person previously appointed from the eligible list resulting from such examination. However, if, as a result of any correction of manifest error or mistake, an eligible on a list or any person appointed from such list is found to have failed the examination, any such eligibility or appointment shall be cancelled and revoked forthwith, and notice of such action shall be sent to the eligible or appointee. The right to cancel and revoke for the reasons set forth herein shall not apply where an appointee has served satisfactorily for a period of at least one year after appointment to such position.

SECTION II-AGENCY ACTIONS-APPEALS TO THE

COMMISSIONER OF CITYWIDE ADMINISTRATIVE SERVICES

8.2.1. General Provisions. (a) A person aggrieved by the following agency actions or determinations may submit an appeal to the commissioner of citywide administrative services:

(1) the allocation of an individual position to an existing civil service title with respect to whether the duties and responsibilities of the individual position so allocated are in conformance with the duties and responsibilities of such title;

(2) the administration and certification of eligible lists for classes of positions unique to the agency by a certifying agency;

(3) except as otherwise provided in paragraph 8.2.3 of this section, the scheduling and conduct of non-written promotion examinations by an examining agency.

8.2.2. General Procedures. (a) An appeal to the commissioner of citywide administrative services pursuant to the provisions of paragraph 8.2.1 shall be made in writing within thirty calendar days of the final agency action or determination.

(b) Where a candidate has been disqualified by an examining agency on the grounds that the candidate was found to lack any of the established requirements for admission to the examination, such appeal must be made in writing within two weeks after the date of notification of such agency action.

8.2.3. Claims of Manifest Error or Mistake. The procedures set forth in section 8.1.1 of these rules shall apply to claims of manifest error or mistake on non-written promotion examinations conducted by an examining agency.

SECTION III-CITY PERSONNEL DIRECTOR OR

AGENCY ACTIONS-APPEALS TO THE

CITY CIVIL SERVICE COMMISSION

[Deleted 10/30/81]

8.3.1. [Deleted 10/30/81]

8.3.2. [Deleted 10/30/81]

8.3.3. [Deleted 10/30/81]

8.3.4. [Deleted 10/30/81]

RULE IX- AUDITS AND INVESTIGATION

SECTION I-AUDITS

9.1.1. Audit Function. The commissioner of citywide administrative services shall audit the performance by agencies of their personnel management functions, and may reverse or rescind any agency personnel action or decision taken pursuant to an assignment or delegation of authority under chapter thirty-five of the New York City charter, upon a finding of abuse, after notification to the agency and an opportunity to be heard.

9.1.2. General Audit Procedures. Such audits shall be conducted in accordance with the provisions of this section and the regulations of the commissioner of citywide administrative services.

(a) The agency personnel and budget officer or the designated representative of such officer shall coordinate the agency preparation for department of citywide administrative services audits and assist the auditors during the period of the audit.

(b) The audit report and recommendations shall be transmitted to the agency head who, within two weeks of receipt thereof, shall make a response to the commissioner of citywide administrative services.

9.1.3. Reports. The commissioner of citywide administrative services shall report to the mayor on the performance by agencies of their personnel management functions.

SECTION II-INVESTIGATION

9.2.1. Investigation Function. The commissioner of citywide administrative services shall have the power to make investigations concerning all matters touching the enforcement and effect of the provisions of civil service law pursuant to and in the manner provided by law.

RULE X-CLASSIFICATION OF POSITIONS NOT INCLUDED

IN THE CAREER AND SALARY PLAN OR IN THE

NEW YORK CITY HOUSING AUTHORITY

CLASSIFICATION PLAN

SECTION I-POSITIONS IN THE EXEMPT CLASS

10.1.1. Number of Positions. Not more than one appointment shall be made to or under the title of any office or position in the exempt class unless a different number is specifically prescribed hereafter.

10.1.2. Classification and Compensation Schedule E. The titles and number of positions authorized for each title in the exempt class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule E.

SECTION II-POSITIONS IN THE NON-COMPETITVE CLASS

10.2.1. Number of Positions. Unless a different or an unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

10.2.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the noncompetitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under their respective departments, under the caption positions subject to rule X.

(b) The maximum salaries appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

SECTION III-POSITIONS IN THE LABOR CLASS

10.3.1. Classification and Compensation Schedule L-10. (a) The titles and grades, if graded, of positions in the class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-10.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

HISTORICAL NOTE

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION IV-POSITIONS IN THE COMPETITIVE CLASS

10.4.1. Classification and Compensation Schedule C-10. (a) The services, titles and grades, if graded, of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-10.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

RULE XI-CLASSIFICATION AND COMPENSATION OF

CAREER AND SALARY PLAN POSITIONS

SECTION I-SALARY GRADES

11.1.1. Career and Salary Plan. The salary grade for positions which are now or may hereafter be made subject to the career and salary plan hereinafter provided, is as follows:

Salary Grade	Salary Grade Minimum	Salary Grade Maximum
32	13,100	Unlimited

SECTION II-CLASSIFICATION OF POSITIONS

11.2.1. Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services shall, in the manner provided by law, duly classify and reclassify positions which are now or which may hereafter be made subject to the classification and compensation plan.

SECTION III-IMPLEMENTATION OF THE

CAREER AND SALARY PLAN

11.3.1. Functions and Procedures. In order to implement the career and salary plan, each position or class of positions subject thereto shall be classified under a standard title and allocated to an appropriate salary grade as soon as practicable following the adoption of this rule, and, upon such position classification and salary grade allocation, the commissioner of citywide administrative services shall establish schedules of equivalent titles indicating in each case the former title of each position and the standard title and salary grade to which such position is classified and allocated. Such original position classifications and salary grade allocations shall be made, in the case of each position or class of positions, on the basis of the duties, responsibilities and examination qualifications naturally and properly pertaining to the present title of such position or class of positions, without regard to out-of-title work performed by any incumbent thereof. Thereafter, the reclassification and salary grade reallocation of positions shall be made on the basis of the actual duties and responsibilities thereof and the examination requirements based on such duties and responsibilities as determined by the department of citywide administrative services.

SECTION IV-EFFECTIVE DATE OF POSITION

CLASSIFICATION AND POSITION RECLASSIFICATION

11.4.1. Prior to July 1, 1955. Any position classification or position reclassification made hereunder prior to July 1, 1955 shall become effective as of July 1, 1954.

SECTION V-CREATION OF NEW POSITIONS

11.5.1. Requirements. A new position or class of positions shall be established hereunder only under the title and salary grade determined therefor in accordance with this rule, the provisions of the New York City charter and the provisions of the resolution of the board of estimate adopted July 9, 1954, calendar no. 1, establishing the pay plan not inconsistent with such charter.

SECTION VI-RIGHTS AND STATUS OF NEW

INCUMBENTS AND ELIGIBLES ON LISTS

11.6.1. Existing Rights and Status. The rights and status of the permanent incumbent of any position subject to the career and salary plan, including rights and status of employees provided for under the provisions of previous resolutions of classification or reclassification, shall not be adversely affected or impaired by the provisions of this rule or any position classification, position reclassification, salary grade allocation, or salary grade reallocation adopted in accordance therewith. Any permanent employee entitled to an unlimited salary grade prior to the classification or reclassification of such employee's position pursuant to the provisions of this rule shall continue to have such fight and shall not be subject to a maximum salary, notwithstanding the fact that the position held by such employee may be classified or allocated to a salary grade having a maximum.

11.6.2. Eligible List Status. The status of any person whose name appears upon an eligible list in existence on July first, nineteen hundred and fifty-four, or whose name appears on an eligible list established as a result of an examination in process on such date, shall not be adversely affected or impaired by the provisions of this rule or any position

classification, position reclassification, salary grade allocation, or salary grade reallocation adopted in accordance therewith.

SECTION VII-RATES OF COMPENSATION OF POSITIONS

NOT COMPENSABLE ON AN ANNUAL BASIS

11.7.1. Commissioner of Citywide Administrative Services; Procedures. In order to effectuate the allocation or reallocation of positions paid at other than a per annum rate, the commissioner of citywide administrative services shall duly establish, in the manner provided by law, formulae for the purpose of computing the salaries of such positions on a per annum basis.

SECTION VIII-REGULATIONS AND PROCEDURES

11.8.1. Commissioner of Citywide Administrative Services. The commissioner of citywide administrative services may prescribe such regulations and procedures as the commissioner of citywide administrative services may deem necessary or advisable to carry out the provisions of this rule.

SECTION IX-APPLICABILITY

11.9.1. Applicability and Effect of Rule XI. The provisions of this rule shall be applicable only to positions covered by the career and salary plan and shall supersede any provisions of other rules and regulations of the commissioner of citywide administrative services inconsistent therewith.

SECTION X-POSITIONS IN THE NON-COMPETITIVE CLASS

11.10.1. Number of Positions. Unless a different or unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

11.10.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the non-competitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under their respective agencies, under the caption "positions subject to rule XI".

(b) The salary grades or maximum salaries appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

SECTION XI-POSITIONS IN THE LABOR CLASS

11.11.1. Classification and Compensation Schedule L-11. (a) The titles and salary grades or grades of position in the labor class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-11.

(b) The salary grades appearing in this schedule are not part of this rule, but are part of the classification of the classified service of the City of New York.

DERIVATION

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION XII-POSITIONS IN THE COMPETITIVE CLASS

11.12.1. Classification and Compensation Schedule C-11. (a) The occupational groups, titles, and salary grades or grades of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-11.

(b) No part of this schedule is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

RULE XII-CLASSIFICATION OF POSITIONS IN THE

NEW YORK CITY HOUSING AUTHORITY

CLASSIFIED PURSUANT TO AND SUBJECT TO

RULE XI PRIOR TO JULY 1, 1958

SECTION I-GENERAL PROVISIONS

12.1.1. Deletion from Rule XI. Effective July 1, 1958, the positions and classes of positions in the New York City housing authority heretofore classified under and subject to rule XI and the resolutions of classification and reclassification adopted pursuant thereto are hereby deleted from rule XI.

12.1.2. Coverage Under Rule XII. All such positions and classes of positions are hereby made subject to the provisions of rule XII as herein set forth.

12.1.3. Continuity and Preservation. All occupational groups, titles, classes of positions, salary grades, tables of equivalencies, rights, status, and privileges accorded heretofore under rule XI and the classifications and reclassifications adopted pursuant thereto, and in respect to classifications and reclassifications hereafter adopted pursuant to rule XII are hereby continued undiminished and unimpaired with respect to incumbents, eligibles, positions, and classes of positions in the New York City housing authority and shall not be adversely affected by reason of the adoption of this rule XII or by reason of the adoption of any classification, reclassification, allocation or reallocation hereafter adopted.

12.1.4. Applicability of Rule XII. The provisions of this rule shall be applicable only to positions in the New York City housing authority subject to rule XI prior to July 1, 1958 and such other classes of positions as may be hereafter established in the New York City housing authority pursuant to the provisions of this rule, any other rule or classification to the contrary notwithstanding.

SECTION II-POSITIONS IN THE NON-COMPETITIVE CLASS

12.2.1. Number of Positions. Unless a different or unlimited number is specifically prescribed hereafter, only one appointment may be made to or under the title of any offices or positions in the non-competitive class listed under this rule.

12.2.2. Classification and Compensation Schedule N. (a) The titles, part numbers, number of positions authorized, and limitations on tenure, if any, for each title in the non- competitive class subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule N, under the heading "New York City housing authority" and under the caption "positions subject to rule XII".

(b) The salary grade appearing in this schedule is not part of this rule, but is part of the classification of the classified service of the City of New York.

SECTION III-POSITIONS IN THE LABOR CLASS

12.3.1. Classification and Compensation Schedule L-12. (a) The titles and salary grades or grades of positions in the labor class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule L-12.

(b) No part of this schedule L-12 is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

DERIVATION

Section amended City Record Sept. 13, 1994 eff. Oct. 13, 1994.

SECTION IV-POSITIONS IN THE COMPETITIVE CLASS

12.4.1. Positions in the Competitive Class. (a) The titles and salary grades or grades of positions in the competitive class subject to this rule shall not be deemed to form part of these rules. The titles and positions subject to this rule are set forth in the "classification and compensation schedules of the classified service," schedule C-12.

(b) No part of this schedule C-12 is part of this rule. The schedule is, however, part of the classification of the classified service of the City of New York.

DERIVATION

Section added City Record Sept. 13, 1994 eff. Oct. 13, 1994.

EXPLANATION

The following basic resolution is included as part of the history of this Department's rules.

Whereas, By virtue of the provisions of Chapter 35 of the revised New York City Charter as adopted by the electors of The City of New York on November 4, 1975, certain changes in personnel administration were adopted and the related rule making power and certain other powers of the New York City Civil Service Commission were vested in the personnel director of the New York City Department of Personnel; and

Whereas, By virtue of the provisions of Section 1142 of such revised Charter, such powers and duties heretofore exercised by the New York City Civil Service Commission have been exercised by the Personnel Director of the New York City Department of Personnel in continuation of their exercise by such Commission, and the provisions of the rules and regulations of such Commission have been applicable to such Personnel Director insofar as not inconsistent with such Chapter and Charter; now, therefore, be it

Resolved, Effective January 1, 1977, in order to conform with the provisions of such Chapter and Charter, all rules of the New York City Civil Commission in force and effect on December 31, 1976 be and the same are hereby declared be the rules of the Personnel Director of the New York City Department of Personnel insofar as such rules are not in conflict with such Chapter or Charter; and be it further

Resolved, In order to conform with certain of the provisions of such Chapter and Charter, the rules of the Personnel Director of the New York City Department of Personnel so declared be and the same are hereby amended at this time in the manner and form as hereinafter set forth; and be it further

Resolved, Effective January 1, 1977, in order to conform with the provisions of such Chapter and Charter, all regulations of the New York City Civil Service Commission in force and effect on December 31, 1976 be and the same are hereby declared to be the regulations of the Personnel Director of the New York City Department of Personnel insofar as such regulations are not in conflict with such Chapter or Charter or the rules are hereby amended, pending a general revision of such regulations.

FOOTNOTES

1

[Footnote 1]: * Rules of the Commissioner of Citywide Administrative Services are adopted pursuant to the procedures specified in the Civil Service Law, §20, subdivision 2 and are printed here for the information and convenience of the public. Formerly Title 59 Appendix A.

Rules of the City of New York

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

55 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-01 Scope.

These rules shall be applicable to all film and photography shoots and related activities conducted on properties and within facilities under the jurisdiction of, and with permission from, the Department of Citywide Administrative Services that shall be authorized by a permit issued by the Mayor's Office of Film, Theatre and Broadcasting. Nothing contained herein shall preclude the requirement to comply with any other applicable law, rule or case law governing such activities.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

NOTE

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

The Department of Citywide Administrative Services and its predecessor City agencies have for more than twenty years allowed and supported film production activities on properties and within facilities under the jurisdiction of the agency. Given the frequency and complexity of filming activities by both amateurs and professionals, it has become necessary to codify the process that has been followed over time. Such codification is also consistent with the City Charter requirement that agencies whose procedures or requirements affect the general public shall promulgate rules governing such activities. The purpose of these rules is thus to provide clear guidance to the persons and entities who wish to engage in film and photography shoots on properties and within facilities under the jurisdiction of DCAS,

activities which require that they obtain permits from the Mayor's Office of Film, Theatre and Broadcasting. This proposal would be encompassed in a new Chapter 13 of Title 55 of the Rules of the City of New York.

DCAS published proposed rules in The City Record on August 25, 2009 and published an amended notice superseding the original notice, with respect to the public hearing date, in The City Record on August 27, 2009. On October 2, 2009, DCAS held a public hearing regarding the rules and received extensive comments through that date.

The adopted rules that are set forth herein include changes made as a result of the comments submitted prior to and during the comment period and public hearing from the members of the public, filming industry representatives and City agency officials. DCAS has made particular changes to the rules, as explained below. Moreover, revisions have been made that reflect a decision regarding the order in which applicants obtain permission from DCAS and MOFTB: the two agencies have determined that it is most efficient for applicants to first obtain DCAS approval prior to obtaining a Required Permit from MOFTB.

The following sections have been added, renumbered or revised:

In §13-02 ("Definitions") two new subdivisions have been added: subdivision (h) sets forth a new definition of "permittee" and subdivision (j) sets forth a new definition of "Required Permit." These definitions have been added to differentiate between a holder of an MOFTB scouting permit and a holder of an MOFTB Required Permit. In addition, the definition of "shooting" (subdivision (m)) has been revised to more accurately reflect the current practice of DCAS regarding the scope of activities that would be subject to the permit process.

A new §13-03 ("Pre-Production Scouting") has been added to clarify the initial steps to be taken prior to proceeding with a project and submitting required documentation to DCAS for requisite approval.

A new §13-04 ("Required Documentation and Approvals from DCAS") has been added to provide more detail regarding this intermediary step, which entails the submission of required documents to obtain requisite DCAS approval. DCAS and MOFTB have considered comments received-including those from filming industry representatives-and subdivision (a) now incorporates a reduction in the minimum time frame for the submission of required documents to DCAS from one week to four business days prior to the commencement of prepping or rigging for a production. Subdivision (a) also provides that the Commissioner or his or her designee may approve an exception to the four business day minimum time frame, if the activity to be undertaken supports such a request.

A new §13-05 ("Application for Required Permit from MOFTB") has been added to clarify both the role of MOFTB and the circumstances under which a Required Permit from MOFTB shall be applied for and issued. Further detail is also provided regarding when the fee shall be imposed.

A new §13-06 ("Indemnification and Insurance Requirements") has been added to provide more detail concerning indemnification and insurance required prior to the commencement of prepping or rigging for a production. In addition, subdivision (a) provides that a copy of insurance documentation and a copy of the MOFTB Required Permit shall be submitted to the DCAS Film Office in order to obtain final DCAS authorization for such production.

In §13-07 ("Production Requirements") subdivision (a) has been revised, taking into consideration comments received from filming industry representatives in particular, to provide that the Commissioner or his or her designee shall approve holding on properties and within facilities under the jurisdiction of DCAS.

In §13-08 ("Post-Production Requirements") subdivision (b) has been revised, considering comments received particularly from filming industry representatives, to provide that any fixtures, furniture, books, doors, windows, walls, and other structures and/or objects shall be returned to their original position and/or restored to their original condition by the permittee during the de-rigging, unless the permittee has obtained prior approval from the Commissioner or his or her designee. Subdivision (c) has also been revised to recognize the reality that when a production related activity is scheduled, arrangements for making DCAS personnel available to staff such activity have implicit costs, and therefore

cancellations twenty-four hours or less prior to such activity are a cost burden to the agency which shall be reimbursed by the permittee.

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-02 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) **Commissioner.** "Commissioner" shall mean the Commissioner of the Department of Citywide Administrative Services ("DCAS").

(b) **Court properties or facilities.** "Court properties or facilities" shall mean the interiors and exteriors of buildings under the jurisdiction of the New York State Unified Court System that are managed by DCAS, and shall include the property adjacent to such buildings that is under the jurisdiction of DCAS.

(c) **DCAS Film Office.** "DCAS Film Office" shall mean the unit of DCAS that oversees the filming, photography and related activities that are conducted on properties and within facilities under the jurisdiction of DCAS.

(d) **Equipment.** "Equipment" shall include, but not be limited to, television, photographic, film or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and any and all production related materials. "Equipment" shall not include (1) "hand-held devices," as defined in §9-02 of the Mayor's Office of Film, Theatre and Broadcasting Film Permit Rules, and (2) vehicles, as defined in section one hundred fifty-nine of the New York Vehicle and Traffic Law, that are used solely to transport a person or persons while engaged in the activity of filming or photography from within such vehicle, operated in compliance with relevant traffic laws and rules.

(e) **Filming.** "Filming" shall mean the taking of motion pictures, the taking of still photography or the use and

operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials.

(f) **Holding.** "Holding" shall mean the temporary accommodation of cast or crew members and other individuals associated with a production in a space in which filming is not taking place. "Holding" may include the space in which an independent company provides meals or catering services to cast or crew members and other individuals associated with a production.

(g) **MOFTB Film Permit Rules.** "MOFTB Film Permit Rules" shall mean the rules promulgated by the Mayor's Office of Film, Theatre and Broadcasting ("MOFTB"), codified as Chapter 9 of Title 43 of the Rules of the City of New York, as amended from time to time.

(h) **Permittee.** "Permittee" shall mean the holder of a Required Permit issued by the Mayor's Office of Film, Theatre and Broadcasting in accordance with §9-01 of the MOFTB Film Permit Rules.

(i) **Photography.** "Photography" shall mean the taking of moving or still images.

(j) **Required Permit.** "Required Permit" shall mean the permit for filming or photography issued by MOFTB in accordance with §9-01 of the MOFTB Film Permit Rules.

(k) **Rigging/de-rigging.** "Rigging/de-rigging" shall mean the loading in or loading out, loading or unloading, of any shooting or production related equipment, including, but not limited to, props, sets, electric and grip equipment, at any location, time and date where film or production is not occurring. Such term shall have the same meaning as the commonly used term "prepping/wrapping."

(l) **Scouting.** "Scouting" shall mean the act of viewing, assessing and photographing locations for filming or photography during pre-production or production for, including, but not limited to, still photography, feature films, television series, mini-series or specials.

(m) **Shooting.** "Shooting" shall mean filming on properties, in the interiors or on exteriors of buildings or facilities under the jurisdiction of DCAS.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-03 Pre-Production Scouting.

(a) Prior to conducting any scouting related activities on properties or within facilities under the jurisdiction of DCAS, a scouting permit shall be obtained from MOFTB.

(b) After a scouting permit is obtained from MOFTB, an appointment shall be scheduled with the DCAS Film Office to make arrangements for such scouting activities.

(c) If after conducting scouting related activities it is determined that a filming or photography project or production will be pursued, the scouting permit holder shall submit the documentation and resolve production issues described in §13-04 of this chapter.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-04 Required Documentation and Approvals from DCAS.

(a) The following forms and documents, which are required for DCAS review and approval prior to obtaining a Required Permit from MOFTB, shall be submitted to the DCAS Film Office no later than four (4) business days prior to the date on which the prepping or rigging for film and/or photography shoots is sought to commence:

(1) Completed "Properties and Facilities Under DCAS Jurisdiction Activity Approval Form" signed by the applicant;

(2) DCAS "Letter of Intent" signed by the applicant;

(3) "Prohibited Conduct" Memorandum signed by the applicant;

(4) Accurate and updated information concerning an applicant's forwarding postal address and, if available, an e-mail address, telephone number and facsimile number for purposes of receiving reimbursement notification from DCAS; and

(5) Any other documents, including, but not limited to, equipment specifications and architectural renderings, that may be required by the DCAS Film Office.

The Commissioner or his or her designee may approve an exception to the four (4) business day minimum time frame referenced in subdivision (a) of this section if the nature and scope of the activity to be undertaken support a request that a shorter time within which to submit requisite forms and documents be granted.

(b) In addition to reviewing the documentation required by subdivision (a) of this section, DCAS shall review and issue determinations concerning the following types of issues prior to completing the approvals necessary for MOFTB's Required Permit:

(1) Structural conditions, landmark status issues, equipment specifics, weight, load and other similar considerations.

(2) The use of smoke, pyrotechnics, firearms, weapons, animals and other special effects or unusual scenes, which shall also be subject to all applicable laws, rules and other governmental policies regarding such activities.

(c) Where appropriate, an applicant may be required to attend a security meeting with DCAS staff, depending on the nature and location of the activity to be undertaken.

(d) Determinations about all DCAS staffing matters, including decisions regarding the scope, type, number or level of staff required, shall be made by DCAS.

(e) The DCAS Film Office shall review the documentation provided in accordance with subdivision (a) of this section, and shall attempt to accommodate particular technical needs and any other special circumstances, including approvals from City agency tenants and DCAS engineers or other personnel, that may be presented by the applicant.

(f) Where the DCAS Film Office has approved an application, it shall notify MOFTB about such approval. DCAS shall also notify the applicant that they can proceed by submitting the documentation to MOFTB necessary for obtaining a Required Permit.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-05 Application for Required Permit from MOFTB.

(a) A Required Permit shall be applied for and issued in accordance with the provisions of §9-02 of the MOFTB Film Permit Rules after the requisite DCAS documentation has been completed by the applicant and reviewed by DCAS; production issues have been resolved with DCAS; and DCAS approval has been received.

(b) A non-refundable fee of $3,200.00 shall accompany any application submitted to MOFTB for a Required Permit. Such fee shall be in the form of a certified bank check or money order, payable to the New York City Department of Finance.

(c) The fee required by this section shall be imposed for each instance in which prepping or rigging commences, is followed by shooting and/or photography for such production, and then is concluded by wrapping, de-rigging and/or related activities.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-06 Indemnification and Insurance Requirements.

(a) Prior to the commencement of prepping or rigging for film and/or photography shoots on properties or within facilities under the jurisdiction of DCAS, a permittee shall provide to the DCAS Film Office a copy of insurance documentation and a copy of the Required Permit in order to obtain final DCAS authorization for such production.

(b) By obtaining a Required Permit from MOFTB, a permittee who is authorized to conduct film shoot and/or photography shoot activities on properties or within facilities under the jurisdiction of DCAS agrees to protect all persons and property from damage, loss or injury arising from any of the operations performed by or on behalf of such permittee, and to indemnify and hold harmless the City of New York, to the fullest extent permitted by law, from all claims, losses and expenses, including attorneys' fees, that may result therefrom.

(c) A permittee who has been authorized by DCAS to conduct film shoot and/or photography shoot activities on properties or within facilities under the jurisdiction of DCAS, and has obtained a Required Permit from MOFTB, shall maintain, during the entire course of its operations, a liability insurance policy with a limit of not less than one million dollars ($1,000,000) per occurrence. Such policy shall name the City of New York as an additional insured with coverage at least as broad as provided by Insurance Services Office (ISO) form CG 20 12 (07/98 ed.). The permittee shall provide to MOFTB the original certificate of insurance signed in ink to which a copy of the required endorsement is attached. For currently enrolled film students, proof of insurance obtained through their school and proof of the student's current attendance shall satisfy this requirement.

(d) If it is determined, in light of the activity for which a Required Permit has been sought, that such activity may increase the potential for injury to individuals and/or damage to property, and that the minimum limit of insurance

should be higher than one million dollars ($1,000,000) per occurrence referenced in subdivision (c) of this section, it shall be determined what higher minimum limit is to be required and the permittee shall be advised of such higher limit. Factors to be considered shall include, but shall not be limited to, the number of people involved, the location of the activity and the nature of the activity. The permittee shall thereafter provide proof of such insurance in accordance with this section. Such determination may be appealed by written request to the Commissioner, who may reverse, affirm or modify the determination and provide a written explanation of his or her decision.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-07 Production Requirements.

(a) Holding on properties and within facilities under the jurisdiction of DCAS is available only for those productions taking place on or within such properties or facilities, upon the approval of the Commissioner or his or her designee.

(b) DCAS shall provide security personnel to protect City property under its jurisdiction during production activities at non-court properties and facilities, the cost of which shall be reimbursed by the permittee.

(c) All individuals affiliated with the permittee and the production shall be required to present a valid, government-issued photo identification card to receive security clearance to have access to properties and facilities under the jurisdiction of DCAS where the production and related activities are taking place.

(d) All individuals affiliated with the permittee and the production shall wear a laminated identification card on non-court properties and within non-court facilities under the jurisdiction of DCAS. The identification cards shall be similar in form and include the name of the production. Failure to display such identification cards at all times may lead to ejection from such properties and facilities.

(e) All production equipment and props brought to properties and facilities under the jurisdiction of DCAS shall be subject to inspection at any time prior to or during the production.

(f) DCAS shall not be responsible for any injury to persons and/or damage or loss to any property on properties and within facilities under the jurisdiction of DCAS arising from any of the operations performed by or on behalf of the

permittee.

(g) In addition to the fee referenced in §13-05 and any other costs identified in §13-08, a permittee requesting use of properties and facilities under the jurisdiction of DCAS for twenty-eight (28) days or longer shall be required to enter into an agreement providing for the payment of renting or leasing such space in an amount not to exceed $5,000.00 per month, in accordance with Administrative Code §4-203(b).

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

Rules of the City of New York

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

55 RCNY 13-08

RULES OF THE CITY OF NEW YORK

Title 55 Department of Citywide Administrative Services

CHAPTER 13 [FILMING AND PHOTOGRAPHY AUTHORIZED BY THE DEPARTMENT]*1

§13-08 Post-Production Requirements.

(a) A permittee is responsible for cleaning and restoring the properties and facilities under the jurisdiction of DCAS after the rigging, shooting and/or holding. The cost of any DCAS employee time incurred due to a permittee failing to clean and/or restore such properties and facilities following the rigging, shooting and/or holding shall be borne by the permittee and reimbursed to DCAS.

(b) Any fixtures, furniture, books, doors, windows, walls, and other structures and/or objects shall be returned to their original position and/or restored to their original condition by the permittee during the de-rigging, unless the permittee has obtained prior approval from the Commissioner or his or her designee. The permittee shall immediately remove any props used during the production from properties and facilities under the jurisdiction of DCAS. The permittee shall reimburse DCAS for any property and facility damage arising from such production activities.

(c) At the conclusion of all film and photography shoots, the permittee shall reimburse DCAS for all production related costs including, but not limited to, DCAS personnel costs contemplated by §13-04(d) and subdivision (a) of this section, and reimbursement for any property or facility damage in accordance with subdivision (b) of this section. If the permittee cancels any of its production related activities twenty-four (24) hours or less prior to the scheduled commencement of such activities on properties or within facilities under the jurisdiction of DCAS, the permittee may be subject to the reimbursement of costs for DCAS personnel assigned to staff such production.

HISTORICAL NOTE

Section added City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added [without heading] City Record Nov. 23, 2009 §1, eff. Dec. 23, 2009. [See T55 §13-01 Note 1]

78 of 158 DOCUMENTS

Rules of the City of New York

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

56 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-01 Construction and Scope of Rules; Variances.

(a) **Construction.** These Rules shall be construed as follows:

(1) any term in the singular includes the plural;

(2) any term in the masculine includes the feminine and neuter;

(3) any Rule or Regulation relating to any act covers: the causing, procuring, aiding or abetting, directly or indirectly, of that act; and allowing a minor child to do that act;

(4) no provision herein shall make unlawful any act necessarily performed by any officer or employee of the Department in the line of duty or work, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the Department;

(5) these Rules are in addition to and supplement all municipal, state and federal laws and ordinances.

(b) **Territorial scope.** The Rules shall be effective within and upon all areas under the jurisdiction of the Commissioner, as defined in Chapter 21 of New York City Charter.

(c) **Variance.** Any act or activity prohibited solely by these Rules shall be lawful if performed in strict compliance with the terms and conditions of a variance issued by the Department. The Department may issue a variance where there are significant practical difficulties, or unnecessary hardships, not created or caused by the applicant, in the way of carrying out the Rules, or where the beauty and utility of property within the jurisdiction of the Department would be

preserved by compliance with the terms and conditions of such variance.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-02 Definitions.

Authorized bathing beaches. "Authorized bathing beaches" are those designated as such by the Department after approval by the Health authorities.

Bathing area. "Bathing area" means any area maintained for the use of bathers, including the water area and lands under water adjacent to and within one thousand feet of the bathing beaches on the ocean, bays or rivers along the shores of New York City under the jurisdiction of the Commissioner.

Bicycle. "Bicycle" means every two- or three-wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, except that it shall not include such a device having solid tires and intended for use only on a sidewalk by pre-teenage children.

Boardwalk. "Boardwalk" means any waterfront promenade maintained for pedestrians.

Commissioner. "Commissioner" means the Commissioner of the Department of Parks and Recreation or the chief executive officer of any successor agency.

Demonstration. "Demonstration" means a group activity including but not limited to, a meeting, assembly, protest, rally, march or vigil which involves the expression of views or grievances, involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved.

Department. "Department" refers to the Department of Parks and Recreation of the City of New York or all

successor agencies.

Dumping. "Dumping" refers to the unauthorized disposal of refuse in an amount totaling one cubic yard or more.

Event. "Event" refers to both Demonstrations and Special Events.

Littering. "Littering" refers to the unauthorized disposal of refuse in an amount totaling less than one cubic yard.

Motor vehicle. "Motor vehicle" refers to any automobile, motorcycle, moped, or other vehicle propelled by a motor.

Owner. "Owner" refers to any person owning, operating, or having the use or control of an animal, a vehicle or any other personal property.

Park. "Park" signifies public parks, beaches, waters and land under water, pools, boardwalks, playgrounds, recreation centers and all other property, equipment, buildings and facilities now or hereafter under the jurisdiction, charge or control of the Department.

Park path. "Park path" means any road, path or trail through or within a park that is not used for vehicular traffic, except for possible use by emergency motor vehicles or Department motor vehicles, provided that it shall not include a path designated by the Commissioner as a bikepath.

Park road. "Park road" means any road through or within a park, and is used for vehicular traffic.

Park sign. "Park sign" means any placard, notice or sign duly posted by the Depart- ment.

Park-street. "Park-street" means the full width of all streets abutting any park.

Pedicab. "Pedicab" means a bicycle as defined in this section or other device that is designed and constructed to transport or carry passengers, that is solely propelled by human power, and that is operated to transport passengers for hire.

Permit. "Permit" unless otherwise specified, means any written authorization issued by or under the authority of the Commissioner for a specified privilege, permitting the performance of a specified act or acts in any park or on any park-street.

Person. "Person" means any natural person, corporation, society, organization, company, association, firm, partnership, or other entity.

Police officer. "Police officer" refers to any member of the Police Department of the City of New York and any other city employee who is a Special Patrolman appointed and sworn in by the Police Commissioner and assigned to the Commissioner.

Rules. "Rules" unless otherwise specified, refers to any Rule established pursuant to §533(a) of Chapter 21 of the New York City Charter and promulgated in compliance with the notice, publication and filing requirements of Chapter 45 of the New York City Charter.

Sexual activity. "Sexual activity" means any activity by a person that reasonably appears to be intended to sexually arouse that person or another person, and in which such person exposes his or her buttock or genitalia, or the area of the female breast below the top of the areola.

Sound reproduction device. "Sound reproduction device" includes, but is not limited to, any radio receiver, phonograph, television receiver, musical instrument, tape recorder, cassette or disc player, speaker device or system and

any sound amplifier.

Special Event. "Special Event" means a group activity including, but not limited to, a performance, meeting, assembly, contest, exhibit, ceremony, parade, athletic competition, reading, or picnic involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved. Special Event shall not include casual park use by visitors or tourists.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Section in original publication July 1, 1991.

Bicycle added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Demonstration definition amended City Record Oct. 30, 2003 eff. Nov. 29, 2003. [See T56 §2-10

Note 2]

Demonstration definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Event definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Park path added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Pedicab added City Record Dec. 22, 2009 §1, eff. Jan. 21, 2010. [See Note 2]

Sexual Activity definition amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

Special Event definition added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 1999:

The Commissioner of Parks and Recreation has the authority pursuant to Section 533(9) of the New York City Charter and Section 10(3) of the Statute of Local Governments to establish and enforce rules and regulations for the use, government and protection of public parks and of all property under the charge or control of the department. The Commissioner has amended Chapters 1 and 2 of Title 56 of the Rules of the City of New York to (a) clarify permit application procedures; (b) establish clear standards for fixing bond amounts, (c) prevent advertising of special events until permits are issued, (d) conform existing rules to changed operational practices and legal standards, (e) revise certain permit fees; and (f) revise sports permit rules.

2. Statement of Basis and Purpose in City Record Dec. 22, 2009: These Rules are promulgated pursuant to the authority of the Commissioner (the "Commissioner") of the Department of Parks and Recreation (the "Department") under §§389(b), 533(a)(9) and 1043 of the New York City Charter and under §20-265 of the New York City Administrative Code. The Commissioner is authorized to establish and enforce rules for the use, governance and protection of public parks and of all property under the charge or control of the Department. After publishing the proposed Rules in the City Record, comments were received from the public. The Rules have been modified to reflect some of the recommendations received. In particular, as the prohibition on the operation of pedicabs on park paths includes areas that would be covered by the prohibition on the operation of pedicabs on greenways under the jurisdiction of the Department, the prohibition on operating pedicabs in any Department greenway has been deleted. Technical changes have also been made to the Rules. The Rules address the operation of pedicabs within City parks so

as to promote safety, preserve aesthetic values and provide a balanced interaction with other park users, while still permitting pedicab drivers to continue to ply their trade.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A group planning a protest demonstration during the Republican National Convention sought a permit for a 75,000 person event to be held on the Great Lawn of Central Park. After the Department of Parks denied the application, petitioners brought an action alleging, among other things, that the licensing scheme violated the First Amendment. The court refused to grant an injunction against enforcement of the regulations, holding that they were content neutral and narrowly tailored to further an important governmental interest (maintenance of parks). The statute required the department to work with event organizers to locate suitable alternative sites, and the department had in fact offered to do so. The court rejected the claim that the permit scheme gave the department the unfettered discretion to grant or deny permits based on the content of the message. The permit scheme factors, such as environmental conditions, scheduling conflicts and the potential for interference with the use and enjoyment of the park by others, did not leave the decision to the whim of the administrators. **National Council of Arab Americans v. City of New York,** 331 F.Supp.2d 258 (S.D.N.Y. 2004).

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-03 General Provisions.

(a) **Hours of operation.** (1) Persons may enter and use the parks from 6:00 a.m. until 1:00 a.m. unless other open hours are posted at any park.

(2) Whenever a threat to public health or safety exists in any park resulting from any natural cause, explosion, accident or any other cause, or by riot or unlawful assembly or activity, the Commissioner may close the park or any part thereof to the public for such duration as he deems necessary to ensure the safety and well-being of the public.

(3) No person shall enter or remain in any park without the permission of the Commissioner when such park is closed to the public.

(b) **Permits.** (1) When any provision of these Rules requires a permit as a condition to the performance of an act or activity, no such act or activity shall be implemented or commenced prior to the receipt of written authorization from the Commissioner or from his authorized representative.

(2) A permit may be granted upon such terms and conditions as the Commissioner shall reasonably impose, and shall authorize the permitted acts or activities only insofar as they are performed in strict accordance with the terms and conditions thereof.

(3) Permits shall be applied for on forms prepared and provided by the Department, which forms shall require such information as the Department may deem appropriate for the review and evaluation of the permit application. Procedures for issuance of special event and demonstration permits are governed by §2-08 of the Department's rules.

The Commissioner may require a fee for the issuance of a permit.

(4) The Commissioner may require the permittee to post a bond in an amount sufficient to ensure full compliance with the terms and conditions of the permit. The decision of whether to require a bond will be based on the following factors:

(a) The location of the event and such location's vulnerability to damage;

(b) Whether the event or any activities associated with the event present a high risk of property damage;

(c) The number of people expected to be in attendance;

(d) The type of equipment to be brought onto the site;

(e) The number of days the permittee will occupy the site;

(f) The season in which the event will take place.

(5) The Commissioner may require the permittee to obtain personal liability insurance for the event, naming the Department and the City of New York as additional insureds. The decision on whether to require insurance will be based on the following factors:

(a) Whether the special event or any activities included as part of the special event present a risk of personal injury or property damage.

(b) Whether the special event involves the sale of food.

(c) Whether the special event involves over 2,000 participants, or a large number of participants relative to the size of the site.

(d) Whether the special event involves transportation and installation of heavy equipment, or the installation of a stage or other temporary structure.

(6) No person shall conduct any activity for which a permit is required unless (a) such permit has been issued; (b) all terms and conditions of such permit have been or are being complied with; and (c) the permit is kept on hand at the event, so as to be available for inspection by Police or Department employees.

(7) Failure to comply with the terms and conditions of any permit shall be a violation of these rules. If, upon expiration or termination of the permit, it is determined that a permittee has not complied with the terms and conditions of the permit, or has violated any law, ordinance, statute or rule, then the following rules shall apply:

(i) any bond provided as security for a permittee's performance with the Department shall be forfeited and retained by the City to the extent necessary to remedy, or compensate the City for, the damages caused by such acts, omissions, or violations;

(ii) the permittee, together with his or her agents and employees who violated such terms and conditions or provisions of law, ordinance, statute or rule, shall be jointly and severally liable for any additional sum necessary to correct or compensate the City for such damages; and

(iii) neither forfeiture of any security nor payment nor recovery for such damages shall in any way relieve the permittee of civil or criminal liability arising from the violation of any law, ordinance or rule.

(c) **Failure to Comply with Directions of Police Officers, Urban Park Rangers, Parks Enforcement Patrol**

Officers, or Other Department Employees, or Park Signs. (1) No person shall fail, neglect or refuse to comply with the lawful direction or command of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee, indicated verbally, by gesture or otherwise.

(2) No person shall fail to comply with or obey any instruction, direction, regulation, warning, or prohibition, written or printed, displayed or appearing on any park sign, except such sign may be disregarded upon order by a Police Officer or designated Department employee.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (b) pars (2), (3) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (b) par (4) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (b) par (7) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) par (4) amended City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

Subd. (b) par (5) added City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

Subd. (b) par (6) designated (Note: This par (6) became par (7) in later amendment) City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 1995:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that the non-commercial distribution of products and materials in the parks is carried out in accordance with standards consistent with the use and enjoyment of the parks by the public.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The ordinance requires people to obey signs placed on park property, unless either a police officer or a Parks Department employee states that the sign be disregarded. In one case, the information charged defendant with being present in a park at 2 a.m., in violation of a sign that stated that the park closed at 9 p.m. The court held that the information was sufficient, and that it was not necessary to allege specifically that no police officer or Parks Department employee had given directing that the sign be disregarded. People v. Davis, 2008 N.Y. Slip Op. 5127U, 19 Misc.3d 145A, 2008 N.Y. Misc. Lexis 3187 (App.Term 2d Dept. 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-04 Prohibited Uses.

(a) **Destruction or abuse of property and equipment.** No person shall injure, deface, alter, write upon, destroy, remove or tamper with in any way, any real or personal property or equipment owned by or under the jurisdiction or control of the Department.

(b) **Destruction or abuse of trees, plants, flowers, shrubs and grass.**

(1) (i) No person shall deface, write upon, injure, sever, mutilate, kill or remove from the ground any trees under the jurisdiction of the Department without permission of the Commissioner.

(ii) No person shall deface, write upon, sever, mutilate, kill or remove from the ground any plants, flowers, shrubs or other vegetation under the jurisdiction of the Department without permission of the Commissioner.

(2) No person shall go upon or allow any animal or child in his custody to go upon any newly-seeded lawn or grass plot.

(3) No person shall go upon or allow any animal or child in his custody to go upon any area enclosed by fencing, temporary or permanent, where such fencing or signs posted thereon reasonably indicate that entry into such area is forbidden.

(4) No person shall possess any tools commonly used for gardening, or any plant, tree, shrub or other vegetation, in any park except where such possession is specifically designated to be permissible by the Commissioner.

(5) No person shall use a metal detector in any park, except in unvegetated beach areas. Use of metal detectors in other park areas will be permitted if the prior written consent of the Commissioner is obtained.

(c) **Littering, polluting, dumping, and unattended property.** (1) No person shall litter in any park. All persons shall use receptacles provided for the disposal of refuse. No person shall deposit household or commercial refuse in any park receptacle.

(2) No person shall throw, drop, allow to fall, or discharge into or leave in the waters within any park (including pools and bathing areas), or any tributary, brook, stream, sewer or drain flowing into said waters, any substance, liquid or solid, which may or will result in the pollution of said waters.

(3) No person shall engage in dumping in any park.

(4) No person shall, within or adjacent to any park, store or leave unattended personal belongings.

(d) **Restrictions on glass.** The Commissioner may, in his discretion, designate certain parks, or portions thereof, as restricted areas wherein no glass bottles or other glass containers will be permitted. Failure to comply with such restrictions shall constitute a violation of these rules. This subdivision (d) shall not apply to glass bottles or containers used in the care and feeding of infant children.

(e) **Aviation.** No person shall voluntarily bring, land or cause to alight within or upon any park, any airplane, balloon, parachute, hang glider, or other aerial device, except that certain areas may be designated appropriate landing places for medical evacuation helicopters. For the purposes of this subdivision (e), voluntarily shall mean anything other than a forced landing caused by mechanical or structural failure of the aircraft or other aerial device.

(f) No person, except a police officer or peace officer while on duty, shall bring into or have in his or her possession in any park, any firearms, slingshots, firecrackers, missile propelling instruments or explosives, including any substance, compound, or mixture having properties of such a character that alone or in combination with other substances, compounds or mixtures, propel missiles, explode or decompose to produce flames, combustion, noise, or noxious or dangerous odors. Nothing in this subdivision (f) shall be construed to prohibit the proper use of cigarette lighters, matches or of charcoal lighter fluid in proper containers in picnic grills where permissible pursuant to the provisions of these Rules.

(g) **Abuse of park animals.** (1) No person shall within any park (including any zoo area) molest, chase, wound, trap, hunt, shoot, throw missiles at, kill or remove any animal, any nest, or the eggs of any amphibian, reptile or bird; or knowingly buy, receive, have in his or her possession, sell or give away any such animal or egg taken from or killed within any park (including any zoo area).

(2) No person shall feed animals in any park (including any zoo area) except unconfined squirrels and birds, and where specifically authorized by the Commissioner. The Commissioner may also designate certain areas where all feeding of animals is prohibited. It shall be a violation of these rules to feed animals in any area where such feeding is prohibited.

(h) **Marijuana; controlled substances.** No person shall bring, possess, distribute, sell, solicit or consume marijuana or any controlled substance, as defined in §220.00 of the New York State Penal Law, in any park, playground, beach, swimming pool, or other park property or facility.

(i) **Failure to control animals.** (1) Except as specified in §1-05(s)(3) or in paragraph two of this subdivision, no person owning, possessing or controlling any animal shall cause or allow such animal to be unleashed or unrestrained in any park unless permitted by the Commissioner in accordance with these rules. No person owning, possessing or controlling any animal shall cause or allow such animal to be out of control in any park under any circumstances. Animals that are unleashed or unrestrained, except as permitted by these rules, or out of control may be seized and

impounded. Properly licensed dogs, wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York and restrained by a leash or other restraint not exceeding six feet in length, may be brought into a park, except in no event shall dogs or other animals be allowed to enter any playground, zoo, swimming pool and swimming pool facility, bathing area and adjacent bathing beach (unless otherwise permitted by the Commissioner and not during the designated bathing season), bridle path (unless leashed dogs are permitted therein by the Commissioner), fountain, ballfield, basketball court, handball court, tennis court, or other area prohibited by the Commissioner. Nothing in this subdivision (i) shall be construed to prohibit persons with disabilities from bringing seeing eye dogs, or other service dogs trained to assist such persons into these areas. Nothing herein shall prohibit horses from entering or being within a park as provided in §1-05(q).

(2) Unless specifically prohibited herein or by the Department of Health and Mental Hygiene ("DOHMH"), properly licensed dogs wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York may be unleashed within a designated park or designated portions of a park between the hours of 9:00 p.m. and 9:00 a.m. under the following conditions: (i) such dogs shall, except for being unleashed, be kept under the control of their owner and shall not at any time harass or injure any park patron and/or, harass, injure, damage, sever, mutilate, or kill any animal, tree, planting, flower, shrub or other vegetation; (ii) such dogs shall not at any time enter any playground, zoo, swimming pool and swimming pool facility, bathing area and adjacent bathing beach (unless otherwise permitted by the Commissioner and not during the designated bathing season), bridle path (unless leashed dogs are permitted therein by the Commissioner), fountain, ballfield, basketball court, handball court, tennis court, or other area prohibited by the Commissioner; (iii) such dogs shall be immediately leashed by their owners upon any direction or command of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which direction or command shall constitute a violation of §1-03(c); (iv) owners of such dogs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of §1-03(c), §1-05(s)(3) and of this subdivision.

(j) **Control and removal of animal waste.** (1) No person shall allow any dog in his custody or control to discharge any fecal matter in any park unless he promptly removes and disposes of same. This provision shall not apply to a guide dog accompanying a person with a disability.

(2) Anyone who drives a horse-drawn carriage into or within a park is required to equip it with horse hampers, horse diapers or some other similar manure catching device which is effective in preventing manure from being deposited on any park street, road or way.

(k) **Urination and defecation in parks.** No person shall urinate or defecate in any Park, or in or upon any park building, monument or structure, except in a facility which is specifically designed for such purpose.

(l) **Disorderly behavior.** It shall be a violation of these rules to engage in disorderly behavior in a park. A person in any park shall be guilty of disorderly behavior who:

(1) enters or leaves any park except by designated entrance ways or exits, or enters or attempts to enter any facility, area or building sealed, locked or otherwise restricted from public access; or

(2) climbs upon any wall, fence, shelter, tree, shrub, fountain or other vegetation, or any structure or statue not specifically intended for climbing purposes; or

(3) gains or attempts to gain admittance to the facilities in any park for the use of which charge is made without paying such charge; or

(4) engages in any form of gambling or game of chance for money, or tells fortunes for money; or

(5) interferes with, encumbers, obstructs or renders dangerous any part of a park or park road; obstructs vehicular or pedestrian traffic; or

(6) engages in fighting or assaults any person; or

(7) engages in a course of conduct or commits acts that unreasonably alarm or seriously annoy another person; or

(8) engages in any form or sexual activity; or

(9) engages in a course of conduct or commits acts that endanger the safety of others.

(m) **Loitering for illegal purposes.** It shall be a violation of these rules to engage in loitering for illegal purposes in a park. Any person in any park shall be guilty of loitering for illegal purposes who:

(1) loiters or remains in a park for the purpose of engaging, or soliciting another person to engage, in sexual activity for money; or

(2) loiters or remains in any park with one or more persons for the purpose of unlawfully using, possessing, purchasing, distributing, selling or soliciting marijuana, alcohol or any controlled substance, as defined in §220.00 of the New York State Penal Law.

(n) **Unlawful exposure.** It shall be a violation of these rules to appear in public on property under the jurisdiction of the Department in such a manner that one's genitalia are unclothed or exposed.

(o) **Obstruction of sitting areas.** No person shall use a bench or other sitting area so as to interfere with its use by other persons, including storing any materials thereon.

(p) **Unlawful camping.** No person shall engage in camping, or erect or maintain a tent, shelter, or camp in any park without a permit.

(q) **Unlawful spitting.** It shall be unlawful for any person to spit or expectorate in or upon any park building, monument or structure.

(r) **Unhygienic use of fountains, pools, and water.** No person shall use, or permit any animal under his or her control to use, any water fountain, drinking fountain, pool, sprinklers, reservoir, lake or any other water contained in the park for the purpose of washing or cleaning himself or herself, his or her clothing or other personal belongings. This subdivision shall not apply to those areas within the parks which are specifically designated for personal hygiene purposes (i.e., bathroom, shower room, etc.), provided, however, that no person shall wash his or her clothes or personal belongings in such areas.

(s) **Unlawful solicitation.** (1) No person shall engage in any commercial activity or commercial speech in any park, except pursuant to a permit issued under §1-03(b) and/or §2-08 of these Rules.

(2) No person shall solicit money or other property from persons not known to such person in any park, unless such person possesses a permit for noncommercial solicitation issued by the Commissioner.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (b) par (4) amended City Record Aug. 15, 1997 eff. Sept. 14, 1997. (Note that this was final

publication of an adopted rule, not a proposed rule change as indicated.) [See Note 1]

Subd. (b) par (5) added City Record Aug. 15, 1997 eff. Sept. 14, 1997. (Note that this was final publication of an adopted rule, not a proposed rule change as indicated.) [See Note 1]

Subd. (g) par (2) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (i) amended City Record Apr. 10, 2007 §1, eff. May 10, 2007. [See Note 3]

Subd. (n) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (o) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (n)) [See T56 §1-02 Note 1]

Subd. (p) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (o)) [See T56 §1-02 Note 1]

Subd. (q) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (p)) [See T56 §1-02 Note 1]

Subd. (r) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (q)) [See T56 §1-02 Note 1]

Subd. (s) relettered and amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. (Formerly Subd. (r)) [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (i) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (k) added (as subd. (t)) City Record May 11, 1995 eff. June 10, 1995. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 15, 1997:

Due to comment received at the hearing on the proposed rules and written comments received by the Department, Parks has determined that it is not necessary at this time to regulate the use of metal detectors on parkland through the issuance of permits. Instead, these final rule amendments restrict the use of metal detectors to unvegetated beach areas, and require that persons obtain the written permission of the Commissioner to use metal detectors on other parkland.

2. Statement of Basis and Purpose in City Record May 11, 1995: The Commissioneer of Parks and Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules set forth above to ensure the health and safety of the public in the parks.

3. Statement of Basis and Purpose in City Record Apr. 10, 2007: This amendment is promulgated pursuant to the authority of the Commissioner of Parks (the "Commissioner") under §§389(b), 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of all property under the charge or control of Parks. Parks strives to accommodate the interests of all its patrons, including both dog owners and other visitors. Because dog owners have few places to exercise their dogs off-leash in the City's urban environment, and dogs tend to become better socialized when they are allowed to recreate off-leash, Parks has been following a limited policy for the last twenty (20) years that allows dogs to be unleashed in certain portions of

parks between 9:00 p.m. and 9:00 a.m. ("Courtesy Hours"). The proposed amendment to §1-04(i) will codify the Courtesy Hours by converting this policy into a rule. To more effectively safeguard public health, the amended rule will also require all dogs that use the park to be licensed and for persons owning or in control of such dogs to have proof that they have been vaccinated against rabies, as required by New York State and City law. Parks is also amending §1-05(s)(3), which allows unleashed dogs within discrete and enclosed areas ("Dog Runs"). The proposed amendment will simply ensure that Parks rules and regulations mesh neatly with the rules and requirements of other state and local agencies regarding dogs. Public comments submitted to Parks indicated that further changes were necessary both to avoid any public confusion regarding the off-leash rules and to ensure the proper administration of such rules. The prohibition against dogs in handball courts was made explicit as it may be unclear to some whether or not such courts come under the definition of "playground". The term "disturb" has been eliminated from the proposed amendment due to its ambiguity. The term "beach" was changed to "bathing area and adjacent bathing beach" so as not to exclude dogs from certain water bodies that exist within the parks system. The same concern prompted Parks to change the term "bathing facility" to "swimming pool facility". Moreover, in recognition of the fact that dogs have in the past been allowed to enter certain beach areas during the fall and winter months, Parks inserted language that will give the Commissioner the power to permit dogs therein if such action is deemed appropriate and if the beach area in question is closed to swimmers. Finally, in recognition of the fact that dogs have in the past been allowed to enter certain bridle paths, Parks inserted language that will give the Commissioner the power to permit leashed dogs therein if such action is deemed appropriate. Before the amended rules go into effect, Parks will begin to notify the public of their provisions and where they will apply. For further information, please visit our website at www.nyc.gov/parks.

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Juniper Park Civic Assn., Inc. v. City of New York, 14 Misc.3d 1203(A), 2006 WL 3628018 (Sup. Ct. Queens Co.), discussed in Note 1 to 24 R.C.N.Y. 161.05

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-05 Regulated Uses.

(a) **Assemblies, meetings, exhibitions.** (1) No person shall hold or sponsor any special event or demonstration without a permit.

(2) Reserved.

(3) No person shall erect any structure, stand, booth, platform, or exhibit in connection with any assembly, meeting, exhibition or other event without approval of the Commissioner or his designated representative.

(b) **Unlawful vending.** No person in any park, or street adjacent to or abutting a park (including all public sidewalks of such abutting streets) shall sell, offer for sale, hire, lease or let anything whatsoever, except under and within the terms of a permit, or except as otherwise provided by law.

(c) **Unlawful posting of notices or signs.** (1) No person shall post, display, affix, construct or carry any placard, flag, banner, sign or model or display any such item by means of aircraft, kite, balloon or other aerial device, in, on, or above the surface of any park for any purpose whatsoever without a permit issued by the Commissioner. Each separate item placed in violation of this section shall constitute a separate violation.

(2) Notwithstanding paragraph (1) of this subdivision (c), any person may carry any item described in paragraph (1) of this subdivision (c), without the aid of any aircraft, kite, balloon or other aerial device, where the space on which the message of such item is contained has a height no greater than two feet and a length no longer than three feet, and that such item takes up a total area of no more than six square feet.

(3) Any person who posts or displays a sign upon park property, including the perimeters of any park, whether or not pursuant to a permit issued under this subdivision (c), shall be responsible for removal of such sign pursuant to the conditions in such permit, or immediately if no such permit has been issued. Failure to remove any sign that is posted or displayed on such property, or that remains on such property, other than in compliance with such permit, shall constitute a violation of these Rules and Regulations.

(4) In the event that a notice or sign is, in violation of this subdivision (c), posted or displayed on any property, including the perimeters of any park, there shall be a rebuttable presumption that any person whose name, telephone number, or other identifying information appears on such notice or sign has violated this subdivision by either (i) pasting, posting, painting, printing or nailing such notice or sign, or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such person's control to engage in such activity; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this paragraph (4).

(d) **Noise; musical instruments; sound reproduction devices.** (1) No person shall make, or cause or allow to be made, unreasonable noise in any park so as to cause public inconvenience, annoyance or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity, or which causes injury to plant or animal life, or damage to property or business.

(2) No person shall play or operate any sound reproduction device, as defined in §1-02 of these Rules, in any park without a permit from the Department of Parks and Recreation and any other City agency or agencies with pertinent jurisdiction. This paragraph (2) shall not apply to the regular and customary use of portable radios, record players, compact disc players, or television receivers, or tape recorders played or operated in full accordance with these Rules so as not unreasonably to disturb other persons in their permitted uses of the park, except that in areas designated by the Commissioner as "quiet zones," such regular and customary use of sound reproduction devices shall be prohibited. Signs shall be posted in all quiet zones advising the public of such prohibition. Use of radios and other sound reproduction devices listened to solely by headphones or earphones, and inaudible to others, is permitted in all areas of the parks.

(3) No person shall play or operate any musical instrument or drum, radio, tape recorder or other device for producing sound in any park between the hours of 10:00 p.m. and 8:00 a.m. except under the express terms of a permit. The Commissioner may, in his or her discretion, further restrict such hours in specific parks where such operation would disturb or damage the comfort, peace, health or safety of persons or businesses.

(4) No person shall play or operate any musical instrument or drum or cause any noise for advertising or commercial purposes except under the express terms of a permit.

(e)(1) Filming or photography requiring a permit. Any person or entity engaged in filming or photography in a park, where such activity is subject to the permit requirements of the Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") (Chapter 9 of Title 43 of the Rules of the City of New York) may engage in such activity only upon obtaining such a permit from that Office. Such permittee shall comply with the requirements of §9-02(c) of such rules ("Responsibility of Holders of Required and Optional permits") including, but not limited to, the obligation to clean and restore any Department property altered in connection with the exercise of such permit. (2) Filming or photography not requiring a permit. Any person or entity engaging in filming or photography in a park, where such activity does not require a permit under the permit requirement rules of MOFTB, may engage in such activity without obtaining a permit from that Office. In addition, any person or entity engaging in filming or photography involving only the use of handheld devices (as defined in paragraph (3) of subdivision (a) of §9-02 of the MOFTB permit rules) that takes place in an area under the Department's jurisdiction that is not a sidewalk, pathway, street, or walkway of a bridge need not obtain a MOFTB permit. Nothing herein shall be deemed to relieve such person or entity of the obligation to obtain a permit from the Department if such activity involves conduct otherwise requiring a permit pursuant to any other rule of the Department.

(f) **Alcoholic beverages.** (1) Except where specifically permitted by the Commissioner, no person shall consume any alcoholic beverage in any park, playground, beach, swimming pool or other park property or facility, nor shall any person possess any alcoholic beverage with intent to consume or facilitate consumption by others of same in any park, playground, beach, swimming pool, or other park property or facility.

(2) It shall be a violation of these rules for any person to appear in any park under the influence of alcohol, to the degree that he may endanger himself or herself, other persons or property, or unreasonably annoy persons in his or her vicinity.

(g) **Beaches, boardwalks and pools.** (1) Bathing in waters adjacent to property under the jurisdiction of the Department shall be permitted only at authorized bathing beaches and only during the bathing season designated by the Commissioner. The Commissioner may limit or expand the extent of bathing beaches or shorten or extend the bathing season with due regard for weather conditions and the safety of the public. It shall be a violation of these rules to bathe at any time in unauthorized areas.

(2) Except where permitted by the Commissioner, no person shall bring into or use in any pool under the jurisdiction of the Department, artificial floats, masks, spears, fins, snorkels, air or gas tanks, or other apparatus used for skin or scuba diving. No person shall bring into or use in any other water under the jurisdiction of the Department, artificial floats, spears, fins, snorkels, air or gas tanks, or other apparatus used for scuba diving.

(3) Except in locations designated for such purpose, no person shall engage in any athletic game or conduct himself in such a way upon a bathing beach or in the water as to jeopardize the safety of himself or others. Surfboards are allowed only at areas expressly designated for such use.

(4) No person having, or apparently having any infectious disease shall be admitted to a bathing beach or bath house, or shall be permitted in the water.

(5) No person shall change clothes except in bath houses or other authorized places. No person shall be nude at any bathing area, beach or pool under the jurisdiction of the Department.

(6) No person shall disobey the reasonable direction of a lifeguard, nor shall any person carry on unnecessary conversation with a lifeguard, or falsely call for help or assistance, or stand, sit upon, or cling to lifeguard perches, or cling to or go into a lifeguard boat except in an emergency.

(7) Persons using swimming pools under the jurisdiction of the Department may only do so if dressed in bathing suits, and only after showering at the park immediately prior to entering such pools.

(8) Bathing and swimming in park swimming pools shall be allowed only on such days and at such times as are designated by the Commissioner and posted at each facility.

(9) No person shall dive into water under the jurisdiction of the department except where specifically authorized by posted signs.

(h) **Fishing.** (1) Fishing shall be permitted from locations under the jurisdiction of the Department, except in open swimming areas or where specifically prohibited. Any person who engages in fishing shall obey all posted guidelines, and comply with all applicable City, State and Federal laws and regulations, including Title 6 of the New York State Environmental Conservation Law.

(2) The use of lead fishing weights in waters under the jurisdiction of the Department shall be a violation of these rules.

(3) Failure to remove fishing line fragments and hooks from land and waters under the jurisdiction of the

Department shall be a violation of these rules.

(4) All fish caught in fresh water areas shall be immediately released. The use of barbed hooks in such areas shall be a violation of these rules.

(5) The use of traps to catch fish and/or crustaceans in areas under the jurisdiction of the Department shall be prohibited.

(i) **Bicycling and operating Pedicabs.**

(1) Any person bringing a bicycle or a pedicab into any park shall obey all park signs pertaining to the use of such bicycles or pedicabs. Only pedicabs that carry a registration plate as required by §20-255 of the New York City Administrative Code and are operated by, or are authorized to be operated by, a pedicab business that possesses a valid pedicab business license, as defined by §20-249 of the New York City Administrative Code, may be operated within property under the jurisdiction of the Department. Only a pedicab driver as defined by §20-249 of the New York City Administrative Code who has a valid pedicab driver's license as defined by §20-249 of the New York City Administrative Code may operate a pedicab within property under the jurisdiction of the Department.

(2) No bicycle or pedicab shall be ridden or otherwise operated in vegetated areas or on any bridle path, pedestrian way, park path, sitting or play area, playground, or in any other area so designated. Bicycles may be ridden and operated on park roads, bikepaths, and other areas specifically designated by the Commissioner. Pedicabs may only be operated on park roads designated by the Commissioner and may not be operated or stopped in (i) any recreation lane designated by the Commissioner for use by pedestrians or bicyclists; or (ii) any bikepath designated by the Commissioner.

(3) No person shall operate a bicycle or a pedicab in a reckless manner. Any person operating a bicycle or pedicab shall ride in the direction of traffic and obey all traffic lights and road signs. Persons operating pedicabs may not ride adjacent to another pedicab, bicycle or vehicle, except when using the left lane to pass another pedicab, bicycle or motor vehicle.

(4) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped, except children may be carried in seats securely attached to a bicycle. No person riding a bicycle shall attach himself or herself or his/her bicycle to the outside of any vehicle being operated upon a roadway.

(5) Any person operating a bicycle shall yield the right of way to pedestrians, in-line skaters, and horse drawn carriages. Any person operating a pedicab shall yield the right of way to pedestrians, bicyclists, in-line skaters, and horse drawn carriages.

(6) On the park roads in Central Park, all pedicabs shall remain in the far right lane, except when passing another pedicab, bicycle, or vehicle, in which case the pedicab may use the next lane to the left to pass.

(7) No person shall operate a pedicab adorned with commercial advertising in any park, or at any other location under the jurisdiction of the Department, unless the pedicab is on a park road during a time when private motor vehicles are allowed to operate on such park road.

(8) No person operating a pedicab in any park, or at any other location under the jurisdiction of the Department, shall solicit, pick up or release passengers except at areas specifically designated by the Commissioner, subject to any limitation imposed by the Commissioner as to the number of pedicabs that may solicit, pick up or release passengers in such designated areas at any given time. Signs shall be posted informing the public of the designation of such areas for solicitation, pick up or release of pedicab passengers.

(9) No person operating a pedicab shall occupy an area reserved solely for buses, taxicabs, horse drawn carriages or other vehicles or motor vehicles.

(10) In addition to complying with the provisions of this subdivision (i) of §1-05, pedicab drivers shall operate pedicabs in compliance with the provisions of §20-259 of the New York City Administrative Code.

(11) If there are exceptional circumstances, the Commissioner, in consultation with the Commissioners of the Police, Transportation and Consumer Affairs Departments, shall be authorized, upon notice, to restrict or prohibit any pedicab driver, as defined by §20-249 of the New York City Administrative Code, from operating his or her pedicab on any park road otherwise designated for pedicab use, for a consecutive period of time, not to exceed fourteen days, or on one or more particular days. For purposes of this paragraph, exceptional circumstances shall include, but not be limited to, unusually heavy pedestrian or bicycle traffic, existence of any obstructions on Department property, a parade, demonstration, special event, or other such similar event or occurrence at or near such location. Notwithstanding the preceding provisions of this paragraph, the Commissioner may restrict or prohibit the operation of pedicabs within property under the jurisdiction of the Department for periods of time in excess of fourteen days when such restrictions apply to bicycles or other types of vehicles.

(j) **Boating.** No person shall land a boat of any kind other than a human-powered boat, such as a kayak, canoe, rowboat or pedal boat, on any park shore except at designated landing areas or in case of an emergency. No person shall operate a boat of any kind, including jet-skis, upon any waters under the jurisdiction of the Commissioner in a reckless manner so as to endanger the life, limb or reasonable comfort of his or her passengers or other persons. Boating in any authorized bathing area is prohibited.

(k) **Unlawful ice activity.** (1) Ice skating is permitted at rinks maintained by the Department for such use, at such times, and subject to the Rules and Regulations prescribed and posted at each facility.

(2) No person shall go upon the ice of any lake or pond in any park except at such places and at such times as may be designated by the Commissioner.

(l) **Planting.** No tree, plant, flower, shrubbery or other vegetation shall be planted in any area under the jurisdiction of the Department without a permit. No such planting shall be undertaken on any street or avenue without a permit for the necessary excavation from the Department of Transportation. Trees planted pursuant to permits shall become the property of the City after a guarantee period of one year has been satisfactorily completed.

(m) **Unlawful fires.** (1) No person shall kindle, build, maintain, or use a fire in any place, portable receptacle, or grill except in places provided by the Department and so designated by sign or by special permit. In no event shall open or ground camp fires be allowed in any park. Any fire authorized by this subdivision (m) shall be contained in a portable receptacle grill or other similar device, and continuously under the care and direction of a competent person over 18 years of age, from the time it is kindled until it is extinguished. No fire shall be within ten feet of any building, tree, or underbrush or beneath the branches of any tree.

(2) No person shall leave, throw away or toss any lighted match, cigar, or cigarette, hot coals, or other flammable material within, on, near, or against any tree, building, structure, boat, vehicle or enclosure, or in any open area.

(n) **Unlawful operation and parking of motor vehicles.** (1) Motor vehicles may not be brought into or operated in any area of a park except on park roads or designated parking areas. Park roads may be closed to motor vehicles at such times and in such places designated by the Commissioner.

(2) A person shall not park any motor vehicle in any park except in areas designated by the Commissioner for parking, and only during the hours of operation of such park.

(3) No person shall use any area of a park, including designated parking areas, for the purpose of performing non-emergency automotive work, including, but not limited to, vehicle maintenance, repairs, or cleaning.

(o) **Unauthorized construction on park property.** No person shall perform or cause to be performed construction

work of any kind or any work incidental thereto, including storage of materials, in any park except pursuant to a permit issued by the Construction Division of the Department.

(p) **Unauthorized dumping, excavations.** No person shall perform, cause, suffer or allow to be performed any excavations within or adjacent to any park property without a permit.

(q) **Horse riding.** (1) No person may ride a horse in any park, except on bridle paths designated by the Department.

(2) It shall be a violation of these Rules to ride a horse into or within a park in a reckless manner; to allow the horse to be left unbridled or unattended; or to allow the horse to cause any damage to any tree, plant, flower, shrubbery or other vegetation under the jurisdiction of the Department.

(r) **Failure to comply with area use restrictions.** (1) No person shall throw, catch, kick or strike any baseball, football, basketball, soccer, golf or tennis ball, or similar object, nor shall any person engage in any sport, game or other competition except in areas designated and maintained therefore. No such use will be allowed at any time if the desired area has previously been allotted by permit issued pursuant to the provisions of these Rules.

(2) No person shall engage in any toy or model aviation, kite-flying, model boating or model automobiling except at such times and at such places designated or maintained therefore.

(3) No person shall roller skate, ski, skateboard, sled or coast on any kind of vehicle except in areas designated and maintained for such use.

(s) **Exclusive areas.** Areas within the parks designated by the Commissioner for exclusive use shall include:

(1) Exclusive children playgrounds: Adults allowed in playground areas only when accompanied by a child under the age of twelve (12).

(2) Exclusive senior citizens areas: Certain areas of any park may be set aside for citizens aged 65 and older, for their quiet enjoyment and safety.

(3) Dog Runs: Certain fenced park areas may be designated by the Commissioner as dog runs, and persons owning or possessing dogs that are wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York are permitted to allow such animals to remain unleashed in these areas. Users of dog runs shall obey posted rules. Users of such dog runs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of §1-03(c), §1-04(i) and of this paragraph.

All exclusive areas will be specifically designated as such and signs will be posted informing the public of this designation.

(t) **Unlawful distribution of products and materials.** No person shall engage in the non-commercial distribution of products and/or material (other than printed or similarly expressive material) without a permit issued by the Commissioner. A permit shall be issued only upon the Commissioner's determination that said distribution will be conducted in a manner consistent with the public's use and enjoyment of the park or facility in question. In making this determination, the Commissioner will consider the nature of the product or material, whether the product or material is compatible with customary park uses, whether the product or material is intended to be used in the park or facility, the age of the targeted audience for the product or material, and whether the area in the park or facility where the distribution will take place is appropriate for such distribution, considering, e.g., its proximity to areas designed for children, quiet zones or other areas designed for activities not compatible with such distribution. In connection with the

foregoing, the Commissioner may consult with parental groups which are involved with the park or facility where a permit for distribution is requested. The Commissioner may also impose conditions upon the distribution of products and materials consistent with the concerns reflected by the factors listed above. Products and/or materials may be distributed only upon an indication of interest by the recipient, and only from a fixed location specified in the permit.

(u) **Rollerblades.** Any person using rollerblades or roller skates in any park shall obey all park signs pertaining to the use of same. No person shall use rollerblades in any park except for park drives or areas designated for such use by the Department, and at times designated for such use. No person shall use rollerblades in a reckless manner, or so as to endanger persons or property.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

Subd. (a) par (1) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (2) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (4) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (a) par (5) deleted City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (c) par (4) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (e) amended City Record July 1, 2009 §1, eff. July 31, 2009. [See Note 1]

Subd. (e) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (g) par (2) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (g) par (9) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (h) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (i) amended City Record Dec. 22, 2009 §2, eff. Jan. 21, 2010. [See T56 §1-02 Note 2]

Subd. (i) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (j) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (n) par (3) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (s) par (3) added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Subd. (s) par (3) open par amended City Record Apr. 10, 2007 §2, eff. May 10, 2007. [See T56 §1-04 Note 3]

Subd. (t) amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (f) par (1) amended City Record May 11, 1995 eff. June 10, 1995. [See T56 §1-04 Note 2]

Subd. (t) added City Record Dec. 21, 1995 eff. Jan. 20, 1996. [See T56 §1-03 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. The New York City Department of Parks and Recreation Regulations, 56 RCNY Sec. 1-05(b), and 1-03(c)(1) are not enforceable against general vendors who exclusively trade in written matter. The Parks Dept. permit system directly contravenes the provisions of 20-473, which explicitly and unambiguously exempts general vendors who exclusively vend written matter from compliance with the written authorization or permit requirements contained elsewhere in the Administrative Code. While Sec. 20-473 confers upon the Department the authority to "regulate the vending of written matter in a manner consistent with the purpose of the parks and the declared legislative intent of this subchapter," that grant of authority may not be read so broadly as to allow the Department to criminalize through administrative fiat that which the City Council has expressly authorized. An administrative agency cannot by its regulations effect its vision of societal public choices and may adopt only rules and regulations which are in harmony with the statutory responsibilities it has been given to administer. In other words, the agency cannot make unlawful that which the legislature still has on its books as lawful. People v. Balmuth, 178 Misc.2d 958, 681 N.Y.S.2d 439 (Crim.Ct. New York Co. 1998), aff'd 189 Misc.2d 243, 731 N.Y.S.2d 314 (App.Term 1st Dept.), leave to appeal denied, 97 N.Y.2d 678, 738 N.Y.S.2d 293 (2001).

¶ 2. A group of activists known as "Cures Not Wars," which is dedicated to the legalization of marijuana for medicinal purposes, has challenged several portions of the regulation, charging that it gives unbridled discretion in the parks commissioner, and failed to provide for prompt appeals from denials of permits. The court declined to grant a preliminary injunction against the city's enforcement of the regulations and said that the plaintiffs had not shown a clear probability of success. The Second Circuit Court of Appeals remanded the case to the District Court, which will determine the validity of the regulation after conducting a hearing. In its opinion, the Circuit Court set forth some of the constitutional standards to be considered, and said: A city the size of New York cannot allow rallies or demonstrations to take place in city parks at the whim of promoters. Competing uses create scheduling problems, and others using parks for recreation have legitimate interests that must be protected. Some regulation is necessary. The challenged regulations plausibly exist for public rather than private goals and pursuant to a regulatory scheme (184 F.3d at 123). The court recognized that the regulations were a form of prior restraint on speech, because they give public officials the power to deny use of a forum in advance of actual expression. A regulation may constitute a prior restraint even though it is not content-based. These are the most serious and least tolerable type of infringement on First Amendment rights. Nevertheless, the court said, this type of content-neutral regulation could be upheld if it is narrowly tailored to serve a significant governmental interest, leave open ample alternatives for communication and does not delegate overly broad licensing discretion to government officials. Beal v. Stern, 184 F.3d 117 (2d Cir. 1999).

¶ 3. A group of visual artists, who displayed and sold their artwork on the streets of New York City, including the area in front of the Metropolitan Museum of Art (the "Met"), challenged 56 RCNY Sec. 1-05, which prohibited them from selling art either within the parks or on territory which was under the jurisdiction of the Parks Department. The court first analyzed the statutory scheme. Admin. Code Sec. 20-453 requires all vendors in New York City to obtain a license, but exempts book vendors. Admin. Code 20-465 prohibits general vendors from vending within the geographical area under the jurisdiction of the Department of Parks and Recreation except within a permit, but this permit requirement is also subject to an exemption for vendors of written material, as described in Section 26-473. 56 RCNY is valid as enforced against most vendors, who deal in neither books nor art. However, the court held, the enforcement of 56 RCNY 1-05(b) against art vendors contravenes Admin. Code 20-473. Lederman v. Giuliani, 2001 WL 902591 (U.S. Dist. Ct. S.D.N.Y.)

¶ 4. See Juniper Park Civic Assn., Inc. v. City of New York, 14 Misc.3d 1203(A), 2006 WL 3628018 (Sup. Ct. Queens Co.), discussed in Note 1 to 24 R.C.N.Y. 161.05

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-06 Fees.

The Commissioner from time to time shall establish fees for use by the public of specialized park facilities. Fee schedules for such facilities shall be published and posted at the subject facility.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the

Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-07 Penalties.

(a) Any violation of these Rules other than Rule 1-04(b)(1)(a) shall constitute a misdemeanor triable by the Criminal Court of the City of New York and punishable by not more than ninety days imprisonment or by a fine of not more than $1,000, or by both, in accordance with §533(a)(9) of Chapter 21 of the New York City Charter.

(b) Any violation of Rule 1-04(b)(1)(a) shall constitute a misdemeanor triable by the Criminal Court of the City of New York and punishable by not more than one year imprisonment or by a fine of not more than $15,000, or both.

(c) Any violation of these Rules shall also constitute a violation triable by the Environmental Control Board and punishable by a civil penalty of not more than $10,000, in accordance with §533(a)(9) of Chapter 21 of the New York City Charter.

HISTORICAL NOTE

Section amended City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 1 USE OF PARKS*1

§1-08 Severability.

If any of these Rules, or application thereof to any person or circumstances, is held invalid, the remainder of the Rules and application of such provision to other persons or circumstances shall remain in full force and effect.

HISTORICAL NOTE

Section laid out City Record June 24, 1996 eff. July 24, 1996. [See Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record June 24, 1996. Note further provisions:

The Commissioner of Parks & Recreation, pursuant to Section 533(a)(9) of the New York City Charter, has the authority to establish and enforce rules and regulations for the use, government and protection of parklands. The Commissioner is promulgating the rules amendments set forth above to ensure the health and safety of the public in the parks, and to ensure that activities in the parks are conducted in accordance with standards consistent with the use and enjoyment of the parks by the public. Some of the above changes were necessitated by the recent adoption of legislation making violations of these Rules & Regulations returnable before the

Environmental Control Board. Other changes are the result of the first comprehensive review of these Rules & Regulations in many years.

Rules of the City of New York

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

56 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-01 Tennis.

Each tennis player must have a valid tennis permit or single-play tennis ticket to play on tennis courts under the jurisdiction of the Department.

(a) **Tennis permits.** (1) Tennis permits are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) Tennis permits are issued on an annual basis, and may be used for unlimited play during the year for which they were issued in one hour increments.

(3) In the event a tennis permit is lost, a duplicate permit may be obtained for a fee pursuant to §2-09(a).

(4) Tennis permits may not be transferred or resold.

(b) **Single-play tennis tickets.** (1) Single-play tennis tickets are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) A single-play tennis ticket may be used during the year in which it was purchased in lieu of a tennis permit to play tennis for one hour during the year during which it was purchased on tennis courts under the jurisdiction of the Department.

(c) **Reservation tickets.** (1) Reservation tickets are available for purchase at the Arsenal and at locations in each of the five boroughs.

(2) A reservation ticket may be used during the year in which it was purchased by a tennis permit-holder to reserve one hour of court time up to eight days in advance of scheduled play.

(3) If tennis courts are closed due to rain, reservation tickets may be exchanged at the location where the reservation was made for a "rain check." The rain check shall be valid for one year from the date of issuance.

(d) **Use of Tennis courts.** (1) Tennis courts are open daily, weather permitting, except when under construction or repair, or when reserved for tournaments or special events.

(2) Players must wear smooth-soled, heelless footwear on clay or composition courts. Suction soled shoes and running shoes are prohibited on all surfaces on Department tennis courts.

(3) Reservation tickets shall be presented to the tennis attendant at the time the reservation is made. The tennis attendant will reserve the court for one hour. If players are more than five minutes late, the reservation shall be forfeited without compensation.

(4) Tennis permits or single-play tickets shall be presented to the attendant in charge of the tennis courts, who will make court assignments.

(5) Reservation ticket holders. Permit holders and single play ticket holders will be given their choice of court assignments in the order of their registration.

(6) Reservations shall be made on the hour.

(7) A maximum of six (6) balls may be used on each court.

(8) All disputes, including but not limited to disputes concerning court reservations, permit ownership, and suitability of court conditions for play, shall be settled by the tennis attendant.

(9) Locker-room and shower privileges are not included with tennis permit privi- leges.

(10) Anyone who fails to comply with these rules or the instructions of the tennis attendant or other Parks employee will be ordered to leave. Failure to leave when ordered to do so shall be treated as a violation of §103(c)(1).

HISTORICAL NOTE

Section repealed and added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-02 Croquet.

(a) Each player must be the holder of a permit.

(b) Permits are strictly personal and not transferable.

(c) A duplicate permit will not be issued unless another fee is paid.

(d) Croquet Fields, when not under repair or reserved for tournaments conducted by the Department of Parks and Recreation, are open daily, weather permitting.

(e) Permit holders are required to show their permits to the representative of the Department of Parks and Recreation upon request.

(f) Order of play is determined by order of arrival at Croquet Field.

(g) Players are required to furnish their own equipment.

(h) Rules of the game should be observed and courtesy extended to all permit holders.

(i) Violation of any of these Rules will result in the cancellation of Croquet Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-03 Lawn Bowling.

(a) Each player must be the holder of a permit.

(b) Permits are strictly personal and not transferable.

(c) A duplicate permit will not be issued unless another fee is paid.

(d) Bowling Greens, when not under repair or reserved for tournaments conducted by the Dept. of Parks and Recreation, are open daily, weather permitting.

(e) Permit holders are required to show their permits to the representative of the Dept. of Parks and Recreation upon request.

(f) Order of play is determined by order of arrival at Bowling Green.

(g) Players are required to furnish their own equipment.

(h) Rules of the game should be observed and courtesy extended to all permit holders.

(i) Violation of any of these Rules will result in the cancellation of Lawn Bowling Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-04 Recreational Lockers.

(a) Season Locker Permits are strictly personal and not transferable.

(b) Permit holders are required to show their permits to the representative of the N.Y.C. Department of Parks and Recreation upon request.

(c) Applicants for season locker privileges must state the name of the Tennis-House in which they desire accommodations.

(d) Only one person will be assigned to each locker.

(e) A permit holder may store his or her personal property in the locker.

(f) Lockers must be kept in a sanitary condition. The cooperation of the permit holder is requested.

(g) Lockers must be vacated at the close of the season, date of which will be posted in all Tennis-Houses and at the Department of Parks offices in the respective Boroughs.

(h) The Department of Parks and Recreation assumes no responsibility for loss of property.

(i) Violation of any of these Rules will result in the cancellation of Locker Permits.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-05 Model Yacht Storage.

(a) Boats must be placed in locations in the boat-house assigned to the Permittee.

(b) Boats must be numbered to correspond with the number on the permit.

(c) The Department assumes no responsibility for the loss of any boat or property.

(d) All boats must be removed from the boat-house at the close of the season, the date of which will be posted in all boat-houses and at the Department office in the respective Boroughs.

(e) In the event of a Sail Boat Contest conducted by the Department, the permit holder may sail his or her boat only at the specified time.

(f) Only one permit is allowed to any one person.

(g) Sail boats exceeding 72 inches in length will not be permitted on the Conservatory Lake or in the Boathouse, Central Park.

(h) The use of power boats by adults is prohibited on Conservatory Lake, Central Park.

(i) Violation of any of these rules will result in the cancellation of the Model Yacht Storage Permit.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-06 Kayaks and Canoes.

(a) A permit allows a permittee and his or her guests to use the City's access facilities for a kayak or canoe. A permittee may have more than one boat listed on his or her permit, but each kayak or canoe on the water must carry a permittee.

(b) The permittee is responsible for the safety of all those in his or her craft. Operation of the kayak or canoe under a permit is solely at the operator's own risk.

(c) Permittees and guests should be strong, experienced swimmers. It is recommended that permittees be able to sustain themselves fully clothed for ten minutes in deep water; swim two body-lengths underwater at a depth of six feet; and tow a "victim" fifteen feet.

(d) Permittees must be familiar with and obey all federal, state and local boating rules and regulations.

(e) Permittees must be aware that environmental conditions such as rip tides and other strong currents can overwhelm even the most adept swimmers. They should know the water and weather conditions before going out.

(f) Because the waters can be polluted, boaters should avoid water contact to the greatest degree possible. Swimming, water skiing, windsurfing, scuba diving or practicing immersion escape techniques in the waters to which the launch site give access are prohibited.

(g) No wildlife or natural land features may be disturbed.

(h) Kayaks and/or canoes may be launched only at launch sites designated for this purpose. No person shall launch any boat or water vehicle that requires the use of a boat trailer or other such trailer for its land transportation. A person shall not launch a motor powered vessel, or use either an inboard or outboard motor on any vessel once underway. No person shall launch rafts or other inflatables, sailboats, rowboats, "wind surfers" or sailboats of any kind.

(i) All persons using a kayak or canoe must wear a Personal Flotation Device.

(j) No person launching a boat from a kayak and/or canoe launch may begin a boating trip before sunrise or complete a boating trip after sunset. The launch sites will be open from April 1 to December 1.

(k) No person shall enter a launch site, or operate or ride as a passenger in a canoe or kayak, under the influence of drugs or alcohol.

(l) No person shall use any boat-launching site or any adjacent waters within 100 feet from the shore of a launch area, including offshore and inshore approaches, for any purpose other than launching boats or removing boats from the water, unless a written permit is obtained from the department.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-07 Golf.

(a) All golf courses under the jurisdiction of the Department are operated by concessionaires. Fees for use are set by the concessionaire, subject to the approval of the Department.

(b) **Identification cards.** Golf course operators are authorized to issue identification cards for discounts on greens fees in the following categories: New York City Resident, Senior, and Junior.

(c) **Inclement Weather.** Golf courses may be closed if there is lightning in the area, or if rain is heavy.

(d) **Rain checks.** In the event a golf course manager determines that a course is unplayable, rain checks may be issued. If four holes or less are completed, players will be issued rain checks for full credit. If between four and twelve holes are completed, players will be issued a credit for nine holes. If thirteen or more holes are completed, no credit will be given.

(e) **Reservations.** Reservations are accepted up to seven days in advance of the day of play. Players will be given their choice of tee time in the order of their registration.

(1) **Cancellation of weekday reservations.** Players will receive a full refund if they cancel weekday reservations up to 24 hours in advance of scheduled play. If players cancel weekday reservations less than 24 hours in advance, players will forfeit reservation fees.

(2) **Cancellation of weekend/holiday reservations.** Players will receive a rain check in an amount equal to the

greens fees if they cancel weekend/holiday reservations up to 24 hours in advance, but will forfeit reservation fees. If players cancel weekend/holiday reservations less than 24 hours in advance, players will be charged for greens fees and reservation fees.

HISTORICAL NOTE

Section repealed and added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Rules of the City of New York

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

56 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-08 Special Events and Demonstrations.

(a) For purposes of this subdivision, the following terms shall have the following meanings:

(1) Same date. "Same date" shall mean the same actual calendar date (numerical date and month) or the same day of the same week in a given month, as relevant. For example, "same date" shall encompass the date July 11 as well as the second Sunday in the month of July, as relevant.

(2) Same location. "Same location" shall mean the location identified in the special event or demonstration permit or the special event or demonstration permit application.

(b) **Applications.** (1) Applications for special event permits must be received at least twenty-one days prior to the requested date for the special event.

(2) Applications for demonstration permits must be received at least five days prior to the requested date for the demonstration. Notwithstanding this requirement, the department will accept all applications for demonstrations involving the expression of viewpoints on topical issues whenever submitted and process such applications as soon as it is feasible to do so, considering the magnitude of the event and the resources of the department.

(3) Applications for special event and demonstration permits will be accepted beginning on the first Monday in November in the calendar year immediately preceding the calendar year for which such permits are sought.

(4) Permit applications received between the first Monday in November and December 1 in the calendar year

immediately preceding the calendar year for which such permits are sought will be processed as follows:

(A) if two or more permit applicants request the same date and the same location, the application from the applicant who held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, shall be eligible for approval; provided, however, that if more than one of such applicants held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, the permit application from the applicant that was received first shall be eligible for approval.

(B) if two or more permit applicants request the same date and the same location and none of these applicants held a permit for such date and such location in the calendar year immediately preceding the calendar year for which such permit is now sought, the permit application that was received first shall be eligible for approval.

(5) All permit applications received after December 1 in the calendar year immediately preceding the calendar year for which the permit is sought will be processed on a "first come, first serve" basis.

(6) The provisions contained in paragraphs (1) and (2) of this subdivision shall be subject to the following:

(A) For permit applications received between the first Monday in November and December 1 in the calendar year immediately preceding the calendar year for which such permits are sought, the Department shall respond to the applicant no later than the third Monday in December of the calendar year immediately preceding the calendar year for which such permit is sought with one of the following responses:

(i) written notification that the permit application has been denied and a statement of the reason or reasons pursuant to paragraph (c) of this subdivision for such denial;

(ii) written notification that more information is needed before the Department can make a determination as to a particular permit application; or

(iii) issuance of the permit.

(B) For permit applications received after December 1 in the calendar year immediately preceding the calendar year for which such permits are sought, the Department shall respond to the applicant with one of the responses enumerated in clauses (i) through (iii) of subparagraph (A) of this paragraph in accordance with the following schedule:

(i) for applications filed 45 days or more prior to the date for which such permit is sought, the Department shall respond no later than thirty days after the receipt of such applications;

(ii) for applications filed less than 45 days but more than 15 days prior to the date for which such permit is sought, the Department shall respond no later than ten days after the receipt of such applications; or

(iii) for applications filed 15 days or less prior to the date for which such permit is sought, the Department shall respond as soon as is reasonably practicable.

(7) Applications for special event and demonstration permits for events to take place on the Great Lawn in Central Park must be received no less than two (2) or more than nine (9) months before the date of the proposed event. However, applications for a demonstration made less than two (2) months before the proposed event where exigent circumstances prevented timely application shall be still accepted, provided that the limitation on the number of events on the Great Lawn in subdivision (t) of this section has not already been reached. Applications must be submitted in writing either by mail or by completing the online form on the Department's website and will be considered in the order in which they are received as shown by the postmark date and time or by the timestamp, respectively.

(c) Upon application, the Commissioner may deny a permit if:

(1) the location sought is not suitable because of landscaping, planting, or other environmental conditions reasonably likely to be harmed by the proposed event;

(2) the location sought is not suitable because it is a specialized area including, but not limited to, a zoo, swimming pool, or skating rink, or because the proposed event is of such nature or duration that it cannot reasonably be accommodated in that location;

(3) the date and time requested have previously been allotted by permit;

(4) within the preceding two years, the applicant has been granted a permit and did, on that prior occasion, knowingly violate a material term or condition of the permit, or any law, ordinance, statute or regulation relating to use of the parks;

(5) the event would interfere unreasonably with the enjoyment of the park by other users; or

(6) with respect to events on the Great Lawn, the conditions for events contained in subdivision (t) of this section are not complied with.

(d) If the permit has been denied pursuant to subdivision (c) of this section, the Department shall employ reasonable efforts to offer the applicant suitable alternative locations and/or times and/or dates for the proposed event.

(e) After a permit application is denied, the applicant may appeal the determination by written request filed with the designated appeals officer who may reverse, affirm, or modify the original determination and provide a written explanation of his or her finding.

(1) If a permit application is denied more than 30 days prior to the proposed event, the applicant shall have 10 days from the date that such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal within 10 days of receipt of such appeal.

(2) If a permit application is denied more than 10 days and 30 days or less prior to the proposed event, the applicant shall have 5 days from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal within 5 days of receipt of such appeal.

(3) If a permit application is denied 10 days or less prior to the proposed event, the applicant shall have 1 day from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal as soon as is reasonably practicable.

(f) Permittees are subject to the rules of the Department, the specific terms and conditions of the permit, and to all applicable City, State, and Federal laws.

(g) Permittees must have the permit in their possession at the time and site of the event, as well as any other permits for the event required by the Department or any other governmental agency.

(h) After notice and opportunity to be heard, the Commissioner may alter or add terms and conditions to a permit, or revoke a permit, based upon the criteria set forth in subdivision (c) of this section.

(i) If the Commissioner revokes a permit prior to the date of the event, the permittee may appeal the revocation, subject to the time limitations set forth in subdivision (e) of this section.

(j) Permittees must confine their activities to the locations and times specified on their permit. The Commissioner may establish specific guidelines for certain designated parks or park locations.

(k) During the course of an event, the Commissioner may suspend a permit where exigent circumstances exist in

the vicinity of the location for which such permit has been issued.

(l) The granting of a permit does not give the permittee the right to sell or offer for sale any articles, tickets, or refreshments within or adjacent to any park area. To do this requires a separate Temporary Use Authorization issued by the Department.

(m) Permits are not transferable.

(n) If a permittee intends to drive vehicles (e.g., buses, cars, trucks, and vans) into a park for deliveries to an event site or for any other legitimate purpose, the permittee must obtain a separate written permit for each such vehicle, specifying the date, time, route, and parking privilege.

(o) Permit applications must indicate whether electrical energy is required for the event. Permittees shall be responsible for the procurement of and payment for any electrical energy used during the event.

(p) Permittees are responsible for cleaning and restoring the site after the event. The cost of any employee overtime incurred because of a permittee's failure to clean and/or restore the site following the event will be borne by the permittee.

(q) Permittees shall be held liable for any and all damages or injuries to persons or property that may occur or be caused by the use of the permit. By accepting a permit, permittees agree to indemnify and hold harmless the City and the Department from any and all claims whatsoever that may result from such use.

(r) Should there be any injuries, accidents, or other health incidents at an event, permittee must notify the Department immediately by calling the Department's hotline, 1-800-201-PARK.

(s) It shall be a violation of these rules to advertise the location of any event requiring a permit under these rules via posting, print media, radio, television, or the internet when the location is under the jurisdiction of the Department and the person who is responsible for placing the advertisement has been informed either that the Department does not intend to issue such permit, or that the Department has already issued another permit for that time and location. There shall be a rebuttable presumption that any person or organization whose name, telephone number or other identifying information appears on any advertisement and who has been informed of the Department's intent to deny an application for such permit or of the Department's issuance of another permit for that time and location has violated this subdivision by either (1) illegally advertising an event, or (2) directing, suffering, or permitting a servant, agent, employee or other individual under such person's or organization's control to engage in such activity; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this subdivision (s).

(t) The following conditions apply to applications for permits for special events and demonstrations on the Great Lawn:

(1) In any calendar year there will be a maximum of six permits granted for large events on the Great Lawn. For purposes of this subdivision, a large event is a special event or demonstration with anticipated attendance between 5,000 and 50,000 participants, which requires the use of the ballfields on the Great Lawn.

(2) Small events on the Great Lawn are not subject to the limitation contained in paragraph (1) of this subsection. For purposes of this subdivision, a small event is a special event or demonstration with anticipated attendance of less than 5,000 participants, which does not require the use of any of the Great Lawn ballfields during the hours that the Department permits the ballfields for athletic uses, and does not displace any athletic use on the Great Law. Small events are subject to paragraphs (5), (6), (7), and (8) of this subsection and permits for special events or demonstrations will not be granted for any ballfields when the ballfields are otherwise closed to all uses.

(3) Attendance at large events may not exceed 50,000 persons.

(4) Large events may take place only during the months of June and July and during the period from the third week of August through the second week of September. A maximum of two events may take place during each of the following time periods: the month of June, the month of July, and the period from the third week of August through the second week of September.

(5) Large and small events are subject to cancellation by the Commissioner at any time in the event wet conditions exist that will increase the likelihood of damage to the park landscape.

(6) The load-in plan for all events must be approved by the Commissioner in order to assure that (A) the flow of persons through park landscapes on appropriately designated paths for that purpose shall be orderly; and (B) the attendees will not damage adjacent landscapes. In addition, in the case of larger events, the load-in plan must be approved by the Commissioner to assure that maximum number of persons attending does not exceed 50,000. In approving an applicant's load-in plan, the Commissioner shall take into consideration any evidence that the applicant has a proven track record of successfully executing event productions and audience management.

(7) An applicant seeking to hold a large or small event shall post a bond in an amount sufficient to pay for any anticipated damage to the Great Lawn in connection with the scheduled event and made payable to the Department. The amount of the bond will be determined by the Commissioner based upon the following factors: (A) the length of the event; (B) the time of year of the event; (C) the nature of the event, including but not limited to, the type of equipment that will need to be brought onto the Great Lawn, the location of such equipment, and the use of any vehicles on the Great Lawn; (D) the number of people attending the event; (E) experience regarding any prior events of the same or a similar nature; and (F) whether the event or any activities associated with the event present a high risk of property damage. However, the Commissioner shall have the authority to waive the bond required by this subdivision where the applicant is able to demonstrate that such bond cannot be obtained without imposing an unreasonable hardship on the applicant. Any request for a waiver of the bond required by this subdivision shall be included by the applicant in their application submitted under this section. The burden of demonstrating unreasonable hardship shall be on the applicant and may be demonstrated by a showing that the cost of obtaining the bond for the event exceeds twenty-five percent (25%) of the applicant's budget for the event. The budget for the event must include not only cash, but also the actual value of any materials and services to be used by the applicant for the event.

(8) A written acknowledgment by the applicant stating, where applicable, how the applicant will comply with the foregoing provisions must be fully executed no less than 10 days prior to the scheduled event's initial load in. However, for a special event application involving a demonstration that is made less than ten days before the proposed event, where exigent circumstances prevented timely application, the written acknowledgment must be executed as soon as practicable before the event's initial load-in.

(u) The East Meadow in Central Park and the paved areas south of the Bethesda Terrace, including the Literary Walk and the Bandshell areas, are available for large special events or demonstrations. The Department will allow up to two (2) events per month that occupy the East Meadow for twenty-four hours or more. The time that an event occupies the East Meadow starts at the occurrence of the initial load-in of equipment and any other materials for the event and concludes when the load-out of the event, including the removal from the park of all equipment and any other materials for the event, is completed.

(v) The Sheep Meadow is reserved solely for passive recreation and the North Meadow and the Heckscher Ballfields are reserved solely for athletic events with permits and passive recreation. The Department does not grant any permits for special events or demonstrations on the Sheep Meadow, the North Meadow or the Heckscher Ballfields in Central Park.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (7) added City Record Dec. 30, 2005 §1, eff. Jan. 29, 2006. [See Note 1]

Subd. (c) pars (4), (5) amended City Record Dec. 30, 2005 §2, eff. Jan. 29, 2006. [See Note 1]

Subd. (c) par (6) added City Record Dec. 30, 2005 §2, eff. Jan. 29, 2006. [See Note 1]

Subd. (t) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

Subd. (u) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

Subd. (v) added City Record Dec. 30, 2005 §3, eff. Jan. 29, 2006. [See Note 1]

NOTE

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

These regulations are proposed to establish the use of certain restored landscapes within Central Park in accordance with sound horticulture practice so as to maintain those areas in a healthy condition. The preservation of these lawns and landscapes makes possible a full range of active and passive recreational use to the benefit of the City's residents and visitors, and assures the greater availability of such preserved lawns and landscapes for use by the public.

As a result of many years of overuse and limited resources for maintenance, the condition of Central Park had deteriorated to the point where many lawns were barren landscapes devoid of plants and shrubs. Through a combination of public funds and private philanthropy in excess of 24 million dollars, a long-term restoration project was undertaken which resulted in the restoration of the Sheep Meadow by 1980, the North Meadow by 1999 (which includes twelve ballfields), and the Great Lawn (which includes eight ballfields) between 1995 and 1997. In the case of the Great Lawn, restoration included the installation of an advanced irrigation and drainage system.

These regulations codify what has been a successful program of regulated use and planned maintenance since the restoration, and provide a clear set of rules for permitted uses in the restored areas of the Park. They seek to foster enjoyment of the park by millions of annual users, including those who participate in athletic leagues, sunbathe, picnic and attend special events. Healthy landscapes are an integral component of an enjoyable experience in the City's parks. Damage to the grass requires that a lawn be closed for repair, displacing both regularly scheduled and spontaneous use. These regulations seek to minimize damage while balancing a variety of competing functions so that the landscapes can provide maximum use and enjoyment for all.

The prevention of lawn damage requires management informed by principles of good horticulture. The regulations permit a variety of uses consistent with accepted horticulture principles for lawn and landscape management. The regulations reflect scientifically based horticulture needs, including seasonal cycles, and the impact of various uses on the grass and surrounding landscapes. Limitations on all use in wet conditions, limitations on some use during certain months and at certain locations, the requirement of appropriate load-in plans for, and control of attendance at, large special events are examples of provisions designed to minimize damage to the lawns and landscapes.

The Great Lawn

The history of use on the Great Lawn has been fairly consistent over several decades prior to its restoration. Free concerts by the Metropolitan Opera and the New York Philharmonic have taken place on the Great Lawn for approximately the last 25 years, and have continued after the restoration. These concerts, which can be cancelled in the event of wet conditions, are relatively low impact events that cause little, if any, damage. Most other large special events that have taken place on the Great Lawn pre-date the restoration to a time when the lawn was in a seriously degraded condition. The stage and heavy equipment used at those events created ruts in the bare ground and, along with

large number of participants, seriously compacted the soil. In addition, the unregulated entry of participants into the event site frequently allowed plantings and landscapes to be overrun and destroyed. Since the restoration, there have been few requests for large special events, and the few that have taken place have demonstrated the need for the restrictions on use contained in these regulations. The schedule for athletic events on the Great Lawn takes into account the seasonal requirements for seeding and nurturing of the grass and causes no damage other than normal wear and tear that is addressed through regular maintenance. Finally, there has always been scheduled athletic use on the ballfields of the Great Lawn. Since restoration those activities have continued.

As a result of this prior experience with use and its effects, the regulations for the Great Lawn codify the number and size of events that can take place there and the time of year during which they can occur. In addition, they mandate an approved load-in plan for equipment and crowds to avoid damage to both the lawns and surrounding landscapes, as well as a prohibition on use when the lawn is wet. A bond is required to cover the potential damage with a waiver provision for when the bond would pose a financial hardship. Hardship is determined by reference to the budget for the event, a provision designed to insure an equitable and realistic assessment of financial ability to post a bond for the event.

In response to comments received since publication of the proposed rules, the rules now clarify that up to six permits will be granted for large events (those with an anticipated attendance of five thousand to fifty thousand, which are held on any of the Great Lawn's ballfields). Small events (those with an anticipated attendance of less than five thousand) on the Great Lawn will not be counted against the limit of six permits. However, such smaller events cannot require the use of any of the Great Lawn ballfields during the hours that the Department permits athletic events on the Great Lawn's ballfields or otherwise displace athletic events on the ballfields and they must also meet all other applicable conditions for special events on the Great Lawn. The primary purpose of the Great Lawn's ballfields is for athletic events and allowing small events in addition to the possible six large events to displace athletic events is antithetical to the purpose of the Great Lawn's ballfields. Moreover, there are many venues within Central Park that can host events with an attendance smaller than five thousand people without disrupting or displacing other activities for which permits have been granted.

Also in response to comments received, the proposed rules were modified so as to treat the annual free concerts by the Metropolitan Opera and the New York Philharmonic in the same manner as other proposed large events on the Great Lawn. As before, the Metropolitan Opera and the Philharmonic continue to be subject to all conditions applicable to large special events on the Great Lawn. Finally, in response to comments, the Department also modified the methodology for determining when an application is received by the Department to ensure that only objective criteria would be used to determine the timing of receipt.

Sheep Meadow and North Meadow

The Sheep Meadow and the North Meadow do not have an advanced irrigation or drainage system similar to that of the Great Lawn. Consequently, they are particularly prone to soil compaction, which could result from special events drawing large crowds. Special events permits are no longer granted for Sheep Meadow. The North Meadow is reserved for athletic and passive recreational activity and has not been the host for non-athletic events since its restoration.

Heckscher Ballfields

Since their initial restoration in the early 1980s the Heckscher Ballfields have been used only for softball and passive recreation, except for early 2005, when they were available to host special events prior to further restoration work beginning in fall 2005. After this further restoration, the Heckscher Ballfields will again be limited to softball and passive recreation.

The East Meadow

The East Meadow remains open to special events. In addition, any future restoration will be such as to ensure that

the East Meadow may continue to host special events as will other suitable areas in the park, such as the paved areas south of the Bethesda Terrace, including the Literary Walk and the Bandshell, and Rumsey Playfield. The use restrictions contained in these regulations with respect to the East Meadow are minimal and ensure that there will be an area in the park for special events on an ongoing basis.

Rules of the City of New York

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

56 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-09 Fee Schedules.

(a) **All boroughs.**

Permit	Fee
TENNIS	
Adult (18 years to 62 years)	$100.00
Senior	$ 20.00
Junior	$ 10.00
Adult Duplicate	$ 15.00
Junior Duplicate	$ 6.00
Single Play	$ 7.00
Reservation Ticket	$ 7.00
Lockers	$ 20.00
LAWN BOWLING	$ 30.00
CROQUET	$ 30.00
MODEL YACHT STORAGE	$ 20.00
KAYAK/CANOE	$ 15.00
POOL PERMITS (Groups of 10 or more supervisedindividuals)	$25.00 plus $1.00 for each individual in in group
SPECIAL EVENT PERMIT	$25.00

USE OF BOARDWALK SPACE BY RESTAURANTS

Self-serve Restaurants	$ 55.00/linear foot
Table Service Restaurants	$110.00/linear foot

(b) **Borough-wide fees.**

Brooklyn.

Kate Wollman Rink

Children and Seniors	$3.00
Adults	$5.00

(c) **Schedule of Permit Fees.**

Field Lights (18 yrs. & over)	$32.00/session
Cricket, football, lacrosse, rugby, soccer and ultimate Frisbeefields (18 yrs. & over)	$20.00/session
Baseball, softball and volleyball, Turf/Soft surface fields(18 yrs. & over)	$16.00/session
Baseball, softball, roller hockey and volleyball, Hardtopplaying surfaces (18 yrs. & over)	$10.00/session

A session is defined as 2 hours, with the exception of week days after 4 p.m. on Manhattan fields, when session length is 90 minutes due to the high demand for fields.

(d) **Ages.**

Day Camp Programs-Age 6-13	$100 per child (Public Assistance Familiesare exempt)

HISTORICAL NOTE

Section amended City Record Feb. 19, 2003 eff. Mar. 21, 2003. [See Note 2]

Subd. (a) Tennis amended City Record Dec. 31, 2003 eff. Jan. 30, 2004. [See T56 §2-10 Note 1]

Subd. (b) par (2) amended City Record Oct. 30 2003 eff. Nov. 29, 2003. [See Note 3]

DERIVATION

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1] Note: The NYLP editor has included several inadvertent omissions made when this amendment was laid out in City Record Nov. 29, 1999 per clarification with the Parks Department.

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

Section amended City Record June 18, 1991 eff. July 18, 1991.

Subd. (a) amended City Record Mar. 4, 1994 eff. Apr. 3, 1994.

Subd. (a) amended City Record Feb. 28, 1992 eff. Mar. 26, 1992.

Subd. (a) amended City Record Sept. 16, 1991 eff. Oct. 16, 1991.

Subd. (b) par (1) amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Subd. (b) par (1) amended City Record Sept. 16, 1991 eff. Oct. 16, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

The Commissioner of Parks & Recreation has the authority pursuant to Section 533(b)(1) and (2) of the New York City Charter and Section 10(3) of the Statute of Local Governments to establish and operate self-supporting, self-sustaining, or revenue producing recreational facilities on park lands.

The Commissioner hereby adopts the above-referenced fees for hardtop softball field and basketball court permits to defray the increased administrative and maintenance costs attendant to the use of the Department's hardtop facilities by the public.

The Commissioner hereby adopts the aforementioned rules to establish a uniform fee for Special Events Permit Applications across the five boroughs. This will simplify the application process as well as the record keeping of the borough offices. Furthermore, as the Special Events Permit Application Fee is administrative, there is little reason for it to vary from borough to borough.

The Commissioner hereby adopts the above rules governing the fees charged at the 79th Street Boat Basin. These fee increases are intended to defray the increased costs associated with managing and maintaining the Boat Basin.

The Commissioner hereby adopts the above-mentioned fees to be charged to businesses that abut boardwalks in all five boroughs. This fee is directed at restaurants that utilize the boardwalk to augment patronage of their establishments.

The Commissioner hereby adopts the amended fees to be charged at the Kate Wollman Skating Rink. These fees are intended to offset the administrative and maintenance costs attendant to Kate Wollman Rink.

2. Statement of Basis and Purpose in City Record Feb. 19, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The amended section incorporates changes in the fees for tennis and ballfield permits, as well as the fees for other permitted recreational activities. The increased fees are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels, improve facility administration and help ensure the continued enjoyment of our athletic fields and outdoor facilities for recreational purposes. The fees for the Cottage Marionette Theatre are deleted because the program is administered by the City Parks Foundation.

3. Statement of Basis and Purpose in City Record Oct. 30, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The proper funding of Kate Wollman Rink is essential to ensure the continued usage and enjoyment of the ice skating rink for recreational purposes.

Rules of the City of New York

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

56 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-10 Special Event Concessions.

(a) For purposes of this section, the following terms shall have the following meanings:

Athletic Charitable Events. "Athletic Charitable Events" shall mean recreational or sporting events that are directly associated with fundraising for an entity which is established as a not-for-profit corporation and which has been granted Federal tax-exempt status. The concession schedule does not apply to Athletic Charitable events under 500 people; however, these events are subject to the regulations set forth in §2-08 of this chapter.

Athletic Non-Charitable Events. "Athletic Non-Charitable Events" shall mean those recreational or sporting events designed for public participation which are not directly associated with charitable fundraising for an entity which is established as a not-for-profit corporation and has been granted Federal tax-exempt status.

Designated Area. "Designated Area" shall mean a specific and/or distinct section or area within the following Parks that can host a special event subject to this schedule without excluding other uses and events in other distinctive sections or areas of the same Park: Battery Park, Central Park, Prospect Park, Randall's Island, Union Square, Carl Schurz Park, Inwood Hill Park, East River Park, Fort Tryon Park, Marcus Garvey, Morningside Park, Riverside Park, Van Cortlandt Park, Pelham Bay Park, Coney Island, Marine Park, Cunningham Park, Flushing Meadows Corona Park, Forest Park, Rockaway and South Beach. (For example, the North Plaza of Union Square Park, the East Meadow of Central Park, the Festival Grounds at Flushing Meadows Corona Park or the Parade Grounds at Van Cortlandt Park.) For all other Parks, designated areas shall mean the entire Park.

Display Vehicles. "Display Vehicles" shall mean vehicles that are designed, decorated or detailed for event

promotion, logo placement, product display and/or sampling of products and services. Mid-size vehicles are those vehicles with two axles. Oversize vehicles, trailers and buses are those vehicles with three or more axles or require a driver's license other than a NYS Class D license.

Event Time. "Event Time" shall mean the time between set-up and break-down of an event and applies to all events that require 18 or more hours.

General Events. "General Events" include, but are not limited to, dance recitals, music, or other artistic or cultural performances, which involve over 500 people, are open to the public and otherwise do not constitute Promotional/Commercial events or Athletic Charitable/Non-charitable events as defined by this section. General Events with less than 500 people are only subject to the regulations set forth in §2-08 of this chapter.

Inflatables. "Inflatables" shall mean balloons or displays that are expanded with air or gas and used for event promotion, logo placement, product display or recreational purposes. Blimps are not considered Inflatables for purposes of this section.

Level A Parks. "Level A Parks" shall mean Father Duffy Square.

Level B Parks. "Level B Parks" shall include the following Parks sites: Battery Park, Central Park, City Hall Park, Madison Square Park, Prospect Park, Randall's Island and Union Square.

Level C Parks. "Level C Parks" shall include the following Parks sites:

(1) Manhattan: Bowling Green, Carl Schurz Park, Dag Hammarskjold Plaza, Damrosch Park, Dewitt Clinton Park, Inwood Hill Park, East River Park, Foley Square Park, Fort Tryon Park, Marcus Garvey, Morningside Park, Passannante Ballfield, Riverside Park, Holcombe Rucker Playground, Washington Square Park, West 4th Street.

(2) Bronx: Harris Field, Van Cortlandt Park, Pelham Bay Park.

(3) Brooklyn: Coney Island, Marine Park.

(4) Queens: Cunningham Park, Flushing Meadows Corona Park, Forest Park, Rockaway Beach.

(5) Staten Island: South Beach.

Level D Parks. "Level D Parks" shall mean all other Parks sites not listed in Level A, Level B, Level C or explicitly excluded from the concession schedule in this section.

Private Events. "Private Events" are those that restrict the general public's access to a Parks site, by either physical barriers or by personnel, or events that are permitted to erect such barriers, or otherwise restrict the general public.

Promotional/Commercial Events. "Promotional/Commercial Events" shall mean those events that seek to promote, advertise, or introduce a product, corporation, company or other commercial entity to either the general public or to a portion of the general public.

Sampling. "Sampling" shall mean the direct distribution of a commercial product or service to the public for the purpose of promoting that product.

(b) A permit pursuant to §2-08 of this chapter shall not issue until the permittee has paid the concession fee required by the Department under this section, unless otherwise exempted by this section. The Commissioner shall charge an applicant a concession fee in accordance with the following schedule. The concession fee shall be charged in addition to any bonding requirement imposed by the Commissioner pursuant to §1-03(b)(4) of this title or any other amount or fee imposed by any other City agency or agencies.

Concession Fee Schedule

Basic Event Fee Level A Parks Level B Parks Level C Parks Level D Parks

Promotional/Commercial, Private

Under 25% of Designated Area N/A $12,000 $7,200 $2,400

25%-50% of Designated Area N/A $20,000 $12,000 $4,000

Over 50% of Designated Area $35,000 $22,000 $13,200 $4,400

Athletic

Athletic Non-Charitable Event

Under 25% of Designated Area N/A $8,000 $4,800 $1,600

25%-50% of Designated Area N/A $16,000 $9,600 $3,200

Over 50% of Designated Area N/A $18,000 $10,800 $3,600

Athletic Charitable Event

Under 25% of Designated Area N/A $1,000 $600 $200

25%-50% of Designated Area N/A $2,000 $1,200 $400

Over 50% of Designated Area N/A $3,000 $1,800 $600

General Event

Under 25% of Designated Area N/A $3,000 $1,800 $600

25%-50% of Designated Area N/A $11,000 $6,600 $2,200

Over 50% of Designated Area $18,200 $13,000 $7,800 $2,600

Subtotal:

Fixed-Rate Charges* Level A Parks Level B Parks Level C Parks Level D Parks

Amplified Sound $2,100 $1,500 $900 $300

Sampling $2,100 $1,500 $900 $300

Tent

801 sq. ft.-6,400 sq. ft. $4,200 $3,000 $1,800 $600

6,401 sq. ft.-10,000 sq. ft. N/A $6,400 $3,840 $1,280

10,001 sq. ft and Above N/A $10,000 $6,000 $2,000

Stage

1,000 cubic ft.-2,500 cubic ft. $2,100 $1,500 $900 $300

2,501 cubic ft.-10,000 cubic ft. $7,000 $5,000 $3,000 $1,000

10,001 cubic ft. and Above $14,000 $10,000 $6,000 $2,000

Back Drop

6 ft.-20 ft. $7,000 $5,000 $3,000 $1,000

21 ft. and Over $14,000 $10,000 $6,000 $2,000

Inflatables**

15 cubic feet-50 cubic feet $7,000 $5,000 $3,000 $1,000

51 cubic feet-100 cubic feet $14,000 $10,000 $6,000 $2,000

Display Vehicles***

Mid-size $10,000 $7,500 $3,000 $1,000

Oversize/Trailers/Buses $12,500 $10,000 $7,500 $3,000

Event Time

18 Hours-48 Hours $7,000 $5,000 $3,000 $1,000

49 Hours-96 Hours $14,000 $10,000 $6,000 $2,000

97 Hours-168 Hours $28,000 $20,000 $12,000 $4,000

169 Hours and More priced bynegotiation

Subtotal:

Total:

***These fixed-rate charges are in addition to the basic event fee.

***A fee will be imposed for each individual Inflatable as defined by this section.

***A fee will be imposed for each individual Display Vehicle as defined by this section.

(c) This schedule does not apply to the following:

(1) blimps;

(2) sites covered by a license, lease or agreement with a third party;

(3) Department facilities, such as recreation centers or Department administrative offices;

(4) demonstrations, which are governed by the guidelines set forth in §2-08 of this chapter; or

(5) concerts with 8,000 or more attendees. In determining the concession fee for such concerts, the following

factors shall be taken into consideration:

(i) the length of time, time of day and the time of year of the concert;

(ii) the nature of use, including but not limited to, the location of the concert and such location's vulnerability to damage, whether the concert or any activities associated with the concert present a high risk of property damage, the type of equipment to be brought into the Park and the displacement of any other Park uses caused by the concert or the concert's set-up and take-down;

(iii) the number of persons expected to attend the concert;

(iv) whether the applicant will impose an admission charge or otherwise limit attendance, or whether attendance will be free and open to the public;

(v) the size and type of the concert, including the size of the stage and other structures;

(vi) the nature of the proposed Park site (e.g. Level A, Level B, Level C or Level D);

(vii) the type and extent of public resources required to stage the concert; and

(viii) except for hand-held signs, the size of each sign and the quantity of signs displayed in the Park in connection with the concert.

HISTORICAL NOTE

Section amended City Record Oct. 30, 2003 eff. Nov. 29, 2003. [See Note 2]

Section added City Record Apr. 20, 2001 eff. May 20, 2001. [See Note 1] Former §2-10 Fees for

Playschool (Preschool) Programs-Age 4 years was repealed City Record Nov. 29, 1999 eff. Dec.

29, 1999.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 20, 2001:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under §§389, 533(a)(9), 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. Certain types of special events substantially increase traffic and usage of various park venues and require a disproportionate deployment of public resources. The proper regulation of such events is essential to ensure the protection of parks property and the continued enjoyment by the people of public parks.

These procedures are intended to provide a framework for the Department of Parks and Recreation to assure the safety of parks property and the continued public usage of parks property for recreational purposes, to preserve public resources associated with the maintenance and upkeep of parks property and to inform persons who wish to use the parks for special events of the amounts that may be charged for such events.

2. Statement of Basis and Purpose in City Record Oct. 30, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use,

government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. This amended rule is designed to clarify the Department's fee structure for special events on parkland. Site fees are intended to compensate the public for the unavailability of City-owned parkland and are applied in part to continue park maintenance and programming. To reflect the physical impact of an event and the displacement of competing normal public use, special event concession fees are weighted by the size and duration of the planned event and the type of park, as well as other elements that impact park users such as amplified sound, sampling, tents, stages, back drops, and display vehicles. The concession fee schedule does not apply to concerts attended by over 8,000 people, blimps, sites covered by a license, lease or agreement with a third party, or any Department facility such as recreation centers or administrative offices. Events at such locations are difficult to price in advance and/or are subject to different regulations and interests or already established contractual relations. The amended rule also does not apply to demonstrations, which are covered by the guidelines set forth in section 2-08 of this chapter.

Rules of the City of New York

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

56 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-11 Seizure of Vehicles Operated on Beaches Pursuant to Administrative Code §18-108.1.

(a) **Seizure of vehicles.** Pursuant to Administrative Code §18-108.1, any motorcycle, all terrain vehicle, snowmobile, or motor vehicle which is operated by an unauthorized person on a beach that is under the Commissioner's jurisdiction may be seized by an authorized designee of the Commissioner or a member of the Police Department.

(b) **Notice.** At the time of such seizure, the operator will be given a written notice explaining the procedures for obtaining release of the vehicle. The notice shall include a brief description of the vehicle, the location where the vehicle may be claimed, and the applicable charges for removal and storage. If the operator is not the owner of the vehicle, notice to the operator is deemed to be notice to the owner, but if the vehicle is registered pursuant to the Vehicle and Traffic Law, the notice shall be mailed to the registered owner as well. If the operator is less than eighteen years old, the notice shall either be personally delivered to the operator's parent or guardian or shall be mailed to the parent or guardian, if the name and address of that person is reasonably ascertainable.

(c) **Procedure for obtaining release of vehicle.** (1) A vehicle seized pursuant to Administrative Code §18-108.1 shall not be released to the owner or other person lawfully entitled to possession unless:

(i) the owner or operator submits documentation that he or she paid all applicable fines or penalties imposed for the violation, and pays all removal and storage charges as set forth below; or

(ii) if there is a proceeding pending before a court or the Environmental Control board of the City of New York (ECB), the owner or operator posts a bond or other form of security in the amount of three thousand dollars ($3,000.00) which will secure the payment of such fines, penalties, and charges, or

(iii) a court or the ECB adjudicates the violation and finds in favor of the operator or owner. If there is such a finding in favor of the operator or owner, any amount previously paid for release of the vehicle shall be refunded.

(2) The owner of a vehicle seized pursuant to Administrative Code §18-108.1 will be given the opportunity to receive a hearing before the ECB with respect to the seizure within five business days of the seizure, in accordance with its rules and procedures.

(3) The owner or operator may request the release of the vehicle by appearing during regular business hours at the location where the vehicle may be claimed, and presenting all of the following documentation:

(i) Current registration certificate if the vehicle is registered, or satisfactory proof of ownership if the vehicle is not registered; and

(ii) Satisfactory government-issued photo identification of the person requesting the release of the vehicle; and

(iii) If a representative of the owner is requesting the release, a notarized letter signed by the owner expressly authorizing the representative to claim the vehicle; and

(iv) Satisfactory documentation as required by subdivision (c) (1) of this section of one of the following: the payment of all fines, penalties, and charges; or the posting of a bond; or an adjudication in favor of the operator or owner by a court or the ECB.

(d) **Abandoned vehicles.** Any vehicle seized pursuant to Administrative Code §18-108.1, which is not released and removed from City property pursuant to subdivision (c) of this section within 10 days following the making of a request by the representative of the Commissioner or the Police Commissioner to remove it, shall be deemed to be an abandoned vehicle. Such request shall be sent by certified or registered mail, return receipt requested, to the registered owner of the vehicle, or if the vehicle is not registered, to the operator of the vehicle. If the operator is less than eighteen years old, the request shall be sent by certified or registered mail, return receipt requested, to the operator's parent or guardian, if the name and address of that person is reasonably ascertainable. If the vehicle is deemed abandoned, it shall be disposed of in conformance with the procedures set forth in New York State Vehicle and Traffic Law §1224, including but not limited to conversion for use by the Department.

(e) **Removal and storage charges.** The charge for removal of a vehicle pursuant to this section shall be twenty-five dollars ($25.00). The storage charge for storing a vehicle pursuant to this section shall be five dollars ($5.00) per day or fraction thereof, computed from the day the vehicle arrives at the storage facility. All charges must be paid in cash, by certified check, or by money order payable to the City of New York.

HISTORICAL NOTE

Section added City Record Nov. 21, 1995 eff. Dec. 21, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 21, 1995:

The Commissioner of the Department of Parks & Recreation is authorized and directed to establish and enforce rules and regulations for the use, government and protection of public parks and of all property under the charge and control of the Parks Department pursuant to Section 533(a)(9) of the Charter of the City of New York. Each year extensive and costly damage is inflicted upon the City's public beaches by the operation of vehicles by unauthorized individuals. Consequently, the New York City government adopted legislation banning vehicles (including motorcycles, all terrain vehicles, and snowmobiles) from beach areas, effective August 12, 1995. Local Law 42 authorizes law enforcement officials to confiscate such vehicles upon issuing a summons to the offender. Parks is required to

promulgate rules providing for the seizure and return of such vehicles.

Rules of the City of New York

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

56 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-12 Basketball, Baseball, Softball, Cricket, Roller Hockey and Volleyball.

(a) **Permit applications.** (1) Those who wish to reserve a court, rink or ballfield ("sports facility") under the jurisdiction or management of the Department for the sports of basketball, baseball, softball, cricket, roller hockey, and volleyball must obtain a written permit from the Department. If an individual is applying for a permit on behalf of a group or athletic league, he or she must so designate on the permit. Only one individual may apply for a permit per group or athletic league.

(2) The completed application must be received by the Department no later than March 1 of each year. Later applications will be filled on a space available basis.

(3) The completed application must include a list of all sports facilities requested.

(4) The Department reserves the right to require a clean up bond and/or personal liability insurance for the event/game, naming the City of New York as co-insured. The factors to be considered in requiring a bond and/or insurance are: (i) estimated number of spectators to attend sessions, (ii) involvement of vendors (where permitted by the Department), (iii) past history of league/event.

(5) Admission tickets, refreshments or any other articles may not be sold or offered for sale within or adjacent to any park area without the prior written authorization of the Department.

(b) **Permits.** (1) The permittee must confine sports activities to the locations and times specified on the permit.

(2) The permittee shall remain subject to the Rules of the Department, the specific terms of the permit, and to all rules, regulations and laws of all City, State and Federal departments insofar as applicable.

(3) The permittee must clean and restore the premises after each session.

(4) Pamphlets, handbills, or advertising material of any kind may not be posted, placed or distributed at the courts or ballfields, unless written permission is granted by the Department.

(5) The permittee must have in his/her possession at the time and site of the reserved session the permit for the use of the sports facility and any other permits or documents required by the Department or any other City agency for proposed activities at the session.

(6) The permittee is liable for all damage or injury to property or persons that may occur or be caused by the use of the permit, and by accepting the permit the permittee agrees to save the City of New York and the Department harmless from any claim whatsoever which may result from such use.

(7) Any transfer of permits requires the approval of the athletic permit coordinator of the borough in which the sports facilities are located. Such transfer, if approved, must take place in the office of the athletic permit coordinator of the relevant borough with both transferor and transferee present. The permit is not otherwise transferable.

(8) The permit is revocable at any time at the discretion of the Commissioner, or his or her representative. The reasons for revocation include, but are not limited to, (i) providing incorrect information on an application form, (ii) failure to adhere to the rules of the Department or the conditions of the permit, and (iii) the use of a permit issued to a youth organization by adults. If a reserved session is cancelled by the Department for administrative reasons, the session may be rescheduled where feasible. The permittee has the right to appeal the revocation of a permit to the Chairperson of the Department's Ballfield Task Force within 10 days immediately following the mailing of notice of revocation by the Department. Such appeal must be in writing. The decision of the Chairperson of the Ballfield Task Force shall be final.

(9) The maximum number of reserved sessions that any adult single permit-holder or league may control is limited to sixteen sessions per week, per park. The maximum length of any permit is six months. Exceptions may be made by the Commissioner or his or her representative. Youth leagues shall not be subject to the 16 session per week, per park limit.

(10) The Department may review the practices of all leagues and tournaments to determine whether the permittee should receive the requested number of reserved sessions. If the Department determines that sports facility space is in high demand and that the permittee does not reasonably need all of the session time requested, the Department may approve the permit in part, granting to the permittee some fraction of the field or court time applied for.

(11) The Department may inspect the site to determine if the permittee is utilizing all of the reserved time requested. In the event that the Department determines that the permittee is not using all of the time requested, the Department may reduce the number of permitted sessions.

(12) Due to space limitations, the Department will not allow the reservation of sports facility space for practice sessions.

HISTORICAL NOTE

Section amended City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Section added City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

The Commissioner of the Department of Parks and Recreation has the authority pursuant to Section 533(b)(2) of the New York City Charter to plan, develop, conduct and supervise recreation programs. The Commissioner hereby establishes a set of rules regulating the application procedure for and use of the Department's basketball courts and baseball/softball fields. These rules will increase the availability of court and field space, eliminate conflicts over competing rights to a court or field, establish uniformity throughout the five boroughs in permit procedures, and increase the general safety and organization of sporting events.

Rules of the City of New York

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

56 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-13 Football, Lacrosse, Rugby, Ultimate Frisbee and Soccer.

(a) **Permit applications.** (1) Anyone who wishes to reserve a field under the jurisdiction or management of the Department for the sports of football, lacrosse, rugby, ultimate frisbee, and soccer must obtain a written permit from the Department. If an individual is applying for a permit on behalf of a group or athletic league, he or she must so designate on the permit. Only one individual may apply for a permit per athletic league.

(2) The completed application must be received by the Department no later than March 1 of each year for spring and summer reservations, and no later than July 1 for fall reservations. Later applications will be filled on a space available basis.

(3) The completed application must include a list of all fields requested.

(4) The Department reserves the right to require a clean up bond and/or personal liability insurance for the event/game, naming the City of New York as co-insured. The factors to be considered in requiring a bond and/or insurance are: (i) estimated number of spectators to attend sessions, (ii) involvement of vendors (where permitted by the Department), (iii) past history of league/event.

(5) Admission tickets, refreshments or any other articles may not be sold or offered for sale within or adjacent to any park area without the prior written authorization of the Department.

(b) **Permits.** (1) The permittee must confine sports activities to the locations and times specified on the permit.

(2) The permittee shall remain subject to the Rules of the Department, the specific terms of the permit, and to all rules, regulations and laws of all City, State and Federal departments insofar as applicable.

(3) The permittee must clean and restore the premises after each session.

(4) Pamphlets, handbills, or advertising material of any kind may not be posted, placed or distributed at the fields, unless written permission is granted by the Department.

(5) The permittee must have in his/her possession at the time and site of the reserved session the permit for the use of the field and any other permits or documents required by the Department or any other City agency for proposed activities at the session.

(6) The permittee is liable for all damage or injury to property or persons that may occur or be caused by the use of the permit, and by accepting the permit the permittee agrees to save the City of New York and the Department harmless from any claim whatsoever which may result from such use.

(7) Any transfer of permits requires the approval of the athletic permit coordinator of the borough in which the fields are located. Such transfer, if approved, must take place in the office of the athletic permit coordinator of the relevant borough with both transferor and transferee present. With this exception, the permit is not transferable.

(8) The permit is revocable at any time at the discretion of the Commissioner, or his or her representative. The reasons for revocation include, but are not limited to, (i) providing incorrect information on an application form, (ii) failure to adhere to the rules of the Department or the conditions of the permit, and (iii) the use of a permit issued to a youth organization by adults. If a reserved session is cancelled by the Department, the session may be rescheduled where feasible. The permittee has the right to appeal the revocation of a permit to the Chairperson of the Department's Ballfield Task Force within 10 days immediately following the mailing of notice of revocation by the Department. Such appeal must be in writing. The decision of the Chairperson of the Ballfield Task Force shall be final.

(9) The maximum number of reserved sessions that any adult single permit-holder or league may control is limited to sixteen sessions per week, per park. The maximum length of any permit is six months. Exceptions may be made by the Commissioner or his or her representative. Youth leagues shall not be subject to the 16 session per week per park limit.

(10) The Department may review the practices of all leagues and tournaments to determine whether the permittee should receive the requested number of reserved sessions. If the Department determines that field space is in high demand and that the permittee does not reasonably need all of the session time requested, the Department may approve the permit in part, granting to the permittee some fraction of the field time applied for.

(11) The Department may inspect the site to determine if the permittee is utilizing all of the reserved time requested. In the event that the Department determines that the permittee is not using all of the time requested, the Department may reduce the number of permitted sessions.

(12) Due to space limitations, the Department will not allow the reservation of field space for practice sessions.

HISTORICAL NOTE

Section added City Record Nov. 29, 1999 eff. Dec. 29, 1999. [See T56 §1-02 Note 1]

Rules of the City of New York

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

56 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-14 Recreation Center Membership Fees.

(a) For purposes of this section, the following terms shall have the following meanings:

Recreation Center. "Recreation Center" shall mean a building or structure located within property under the jurisdiction of the Department, with the primary purpose of providing recreational programming and other community activities.

Adult Membership Fee. "Adult Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons between eighteen (18) and fifty-four (54) years of age, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Senior Citizen Membership Fee. "Senior Citizen Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons fifty-five (55) years of age and over, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Child Membership Fee. "Child Membership Fee" shall mean the membership fee for use of recreation centers in a particular class (i.e. Recreation Center With an Indoor Pool, Recreation Center Without Indoor Pool, CD Recreation Center) for all patrons under eighteen (18) years of age, not including session fees. Membership includes, but is not limited to, use of fitness equipment, indoor pools and computer resource centers.

Recreation Center Without Indoor Pool. "Recreation Center Without Indoor Pool" shall include all recreation centers without indoor pools, including, but not limited to the following recreation centers: Hunts Point Recreation Center, Hamilton Fish Recreation Center, Thomas Jefferson Recreation Center, Von King Recreation Center, Sunset Recreation Center, Red Hook Recreation Center, J.H. Wright Recreation Center, Jackie Robinson Recreation Center, Al Smith Recreation Center, Pelham Fritz Recreation Center, Lost Battalion Hall Recreation Center, Sorrentino Recreation Center, Cromwell Recreation Center, Williamsbridge Oval Recreation Center, St. James Recreation Center, and Owen Dolan Recreation Center.

Recreation Center With Indoor Pool. "Recreation Center With Indoor Pool" shall include all recreation centers with indoor pools, including, but not limited to the following recreation centers: St. Mary's Recreation Center, Brownsville Recreation Center, Metropolitan Pool Recreation Center, St. John's Recreation Center, Asser Levy Recreation Center, Chelsea Recreation Center, Hansborough Recreation Center, Recreation Center 54, Recreation Center 59, Tony Dapolito Recreation Center, and Roy Wilkins Recreation Center.

Session Fees. "Session Fees" shall mean all fees associated with specific instructor-led courses including, but not limited to the following activities: aerobic classes, martial arts instruction, music lessons, and yoga classes.

(b) No person shall use any recreation center and/or participate in activities requiring the payment of a session fee as defined in this section unless such person has paid the applicable annual membership fee set forth in subdivision (c) of this section]*4 in addition to any applicable session fees.

(c) **Recreation center membership fee schedules.** The Commissioner shall charge all patrons at recreation centers subject to these provisions the amount set forth in the following schedule for an annual membership. Such annual membership does not include session fees.

Type ofRecreationCenter ChildMembershipFee AdultMembershipFee Senior CitizenMembershipFee

Recreation Centerwith Indoor Pool $0 $100 $10

Recreation Centerwithout IndoorPool $0 $75 $10

(d)(1) Session fees will be set pursuant to the following schedule:

Type of Recreation Center Session Fee (Maximum)

Recreation Center withIndoor Pool $10-$100

Recreation Center withoutIndoor Pool $10-$100

(2) **Factors for determination of session fees.** In determining the amount of the session fees pursuant to the schedule above, the following factors shall be taken into consideration:

(i) the length of the course

(ii) the number of scheduled classes

(iii) the skill required for the instructor

(iv) the expected number of participants

(v) such other information as the Commissioner shall deem relevant.

HISTORICAL NOTE

Section amended City Record May 26, 2006 eff. June 25, 2006. [See Note 3]

DERIVATION

Section amended City Record May 29, 2003 eff. June 28, 2003. [See Note 2] The opening paragraph of subd. (c) was amended without [ ] and italics to change "all patrons at recreation centers" to be "a recreation center member".

Section added City Record June 3, 2002 eff. July 3, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 3, 2002:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under section 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. In 2001, over 3.2 million patrons used the City's recreation centers. The current voluntary membership fee of twenty-five dollars ($25) has failed to provide sufficient funding to operate and to staff these centers.

The proper funding of the City's recreation centers is essential to ensure the continued usage and enjoyment of park facilities for recreational purposes. The increased mandatory membership fees are intended to provide funding for the Department of Parks and Recreation to purchase and maintain new fitness equipment, sustain appropriate staffing levels, and continue Center and community programming. Moreover, children are not required to pay membership fees, while seniors only are required to pay a nominal membership fee. In addition, these fees are in line with recreation centers in other municipalities and are far below the fees charged by recreation centers operated by not-for-profit institutions.

2. Statement of Basis and Purpose in City Record May 29, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under section 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. In 2002, over 3.4 million patrons used the City's recreation centers. The current membership fees have failed to provide sufficient funding to operate and the staff these centers. The proper funding of the City's recreation centers is essential to ensure the continued usage and enjoyment of park facilities for recreational purposes. The increased membership fees are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and continue Center and community programming. Moreover, children are not required to pay membership fees, while seniors only are required to pay a nominal membership fee. In addition, these fees are in line with recreation centers in other municipalities and are far below the fees charged by recreation centers operated by not-for-profit institutions.

3. Statement of Basis and Purpose in City Record May 26, 2006: This amendment is promulgated pursuant to the authority of the Commissioner of Parks (the "Commissioner") under §§389(b), 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of all property under the charge or control of Parks. The amendment provides an updated and consistent fee schedule for all recreation centers. The new fees ensure the continued usage and enjoyment of all recreation centers and provide adequate funding for Parks to sustain appropriate staffing levels and improve facility administration therein. Moreover, it has recently been determined that Parks may charge membership fees for recreation centers funded by Community Development Block Grants that are consistent with all other recreation centers. With this amendment, the only relevant

factor that affects recreation center membership fees is whether or not a recreation center has a pool dedicated for public use, which increases the operation costs of such centers.

FOOTNOTES

4

[Footnote 4]: * Erroneous closing bracket.

Rules of the City of New York

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

56 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-15 Miscellanous Fees.

Capital Projects Bid Document Fees (payable by all persons receiving bid documents from the Department in a capital project procurement):

Less than 100 pages $25.00 (refunds will be issued for documents returned in good condition within 30 days of receiving documents and accompanied by the original transaction receipt)

More than 100 pages $100.00 (refunds will be issued for documents returned in good condition within 30 days of receiving documents and accompanied by the original transaction receipt)

HISTORICAL NOTE

Section added City Record Dec. 31, 2003 §2, eff. Jan. 30, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 31, 2003:

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

Section 2-09 incorporates changes in the fees for tennis permits and section 2-15 establishes fees for bid documents. The increased tennis fees are essential to ensure the continued usage and enjoyment of the Department's tennis courts. In addition the establishment of bid document fees will allow the Department to better manage its resources by reducing material and staff time spent in printing bid documents.

Rules of the City of New York

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

56 RCNY 2-16 [Automated

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 2 PERMITS AND FEE SCHEDULES

§2-16 [Automated External Defibrillators]*3

The Department will place automated external defibrillators in the following locations:

(a) **Bronx:**

(1) Van Cortlandt Park Visitor Center: Broadway at West 242 St., Bronx, NY 10471.

(2) Owen Dolen Golden Age Center: 1400 Westchester Square, Bronx, NY 10461.

(3) St. James Recreation Center: East 192nd St. & Jerome Ave., Bronx, NY 10468.

(4) St. Mary's Recreation Center: East 145th St. & St. Ann's Ave., Bronx, NY 10455.

(5) Williamsbridge Oval Play Center: East 208th St. & Bainbridge Ave., Bronx, NY 10461.

(6) Hunt's Point Recreation Center: Manida St. & Lafayette, Bronx, NY 10474.

(b) **Queens:**

(1) Roy Wilkins Recreation Center: 177th St. & Baisley Blvd., St. Albans, NY 11434.

(2) Sorrentino Recreation Center: 18-48 Cornaga Ave., Far Rockaway, NY 11691.

(3) Lost Battalion Hall: 93-29 Queens Blvd., Rego Park, NY 11374.

(4) Passerelle Building: Flushing Meadows-Corona Park, Flushing, NY 11368.

(5) Olmsted Center: Flushing Meadows-Corona Park, Flushing, NY 11368.

(6) Overlook: 80-30 Park Lane, Kew Gardens, NY 11415.

(c) **Staten Island:**

(1) Cromwell Recreation Center: Pier 6 at Bay and Hannah St., Staten Island, NY 10301.

(2) Stonehenge: 1150 Clove Road, Staten Island, NY 10301.

(3) Conference House: 7455 Hylan Blvd., Staten Island, NY 10307.

(4) Sailor's Snug Harbor: 1000 Richmond Terrace, Staten Island, NY 10301.

(5) High Rock Park: 200 Nevada Ave., Staten Island, NY 10306.

(6) Greenbelt Nature Center: 700 Rockland Ave., Staten Island, NY 10306.

(d) **Brooklyn:**

(1) Herbert Von King Recreation Center: 670 Lafayette Ave., Brooklyn, NY 11216.

(2) Metropolitan Pool: 261 Bedford Ave. (at Metropolitan Ave.), Brooklyn, NY 11211.

(3) Sunset Park Recreation Center: 44th St. at 7th Ave., Brooklyn, NY 11220.

(4) Red Hook Recreation Center: 155 Bay St., Brooklyn, NY 11231.

(5) Litchfield Villa: 95 Prospect Park West, Brooklyn, NY 11215.

(6) Brownsville Recreation Center: 1555 Linden Blvd., Brooklyn, NY 11212.

(7) Salt Marsh Recreation Center: 3302 Avenue U, Brooklyn, NY 11234.

(e) **Manhattan:**

(1) The Arsenal: 830 Fifth Ave., New York, NY 10021.

(2) Alfred E. Smith Recreation Center: 80 Catherine St., New York, NY 10038.

(3) Asser Levy Recreation Center: East 23rd St. at FDR Drive, New York, NY 10010.

(4) Carmine Pool: Clarkson St. & Seventh Ave. South, New York, NY 10014.

(5) Hamilton Fish Recreation Center: 128 Pitt St., New York, NY 10002.

(6) Hansborough Recreation Center: 35 W. 134th St., New York, NY 10037.

HISTORICAL NOTE

Section added (as §2-14) City Record Sept. 19, 2005 eff. Oct. 19, 2005. Note section and internal

renumbering by Law Department per Charter §1045(b). [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 19, 2005:

This rule is required to be promulgated pursuant to §17-188 of the Administrative Code, specifically subsection (e) and is necessary for the law's proper implementation and enforcement. The general purpose of §17-188 of the Administrative Code is to make "Automated External Defibrillators" available and "readily accessible for use during medical emergencies" in accordance with §3000-b of the New York state public health law. Available in "publicly accessible areas" including "parks under the jurisdiction of the department of parks and recreation" will encourage persons to "voluntarily and without expectation of monetary compensation" provide first aid or emergency treatment using an automated defibrillator that has been made available pursuant to this section, to a person who is "unconscious, ill or injured." In response to comments received, an additional location, that of the Salt Marsh Nature Center in Marine Park, was added.

FOOTNOTES

3

[Footnote 3]: * Heading supplied by editor.

Rules of the City of New York

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

56 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-01 Application.

These rules apply to the permissible use of the West 79th Street Boat Basin which is located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan. They also govern the Sheepshead Bay Piers adjacent to Emmons Avenue in Brooklyn, the World's Fair Marina in Flushing Bay which is located in Flushing Meadows Corona Park, Queens, and any other marina acquired by the department and which is not covered by a concession agreement with the department. These special rules supplement the general rules which govern the use of city parkland set forth in chapters one and two of this title. To the extent that they are not inconsistent herewith, the rules set forth in chapters one and two of this title apply to the use of the marina, piers and boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

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

56 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-02 Definitions.

"Boat Basin." The West 79th Street Boat Basin located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan.

"Boat Launch." Any location designated by the commissioner for the launching of vessels of any kind via the use of an automobile or other motorized vehicle down a fixed ramp.

"Chief Dockmaster." Chief of the Department of Parks & Recreation Marine Division. The person appointed by the commissioner that is responsible for the overall administration of division facilities and enforcement of department policies and rules.

"Commercial Permit." A permit to store, dock or launch a vessel used for commercial operations.

"Commissioner." The commissioner of Parks and Recreation.

"Department." The department of Parks and Recreation.

"Dinghy." A tender with a total length of twelve feet or less.

"Dockmaster." The person who administers, manages or maintains the marina, piers and boat basin at the direction of the supervisory or chief dockmaster.

"Emergency." Any situation which the dockmaster determines threatens imminent personal injury, property damage or environmental damage.

"Facility." Any or all of the boat basin, marina and piers.

"Garage." The underground parking garage at the rotunda in the boat basin.

"Guest." A person who enters the marina, piers or boat basin at the invitation of a permittee to board the permittee's vessel.

"Houseboat." Any vessel which is regularly used as a dwelling place and is unable to operate in open water when subject to moderate winds and strong currents.

"Marina." The World's Fair Marina in Flushing Bay, located in Flushing Meadows Corona Park, Queens.

"Marine Division." Department of Parks and Recreation division responsible for managing, operating and maintaining recreational and commercial vessel usage at, but not limited, to the division facilities and mooring fields.

"Parking Permit." Dated written permission to park at the marina parking lot or boat basin garage.

"Permit." A permit to store, dock, moor or launch a vessel at the marina, piers or boat basin. Such term includes, but is not limited to, seasonal dockage permits issued for the 6 month summer season or 12 month terms, transient dockage permits issued on a daily basis, permits to launch kayaks or canoes at the marina, piers or boat basin, permits for commercial vessel operations and special permits for educational research events and special events. Such term does not include parking permits.

"Permittee." The person whose name appears on a permit.

"Permittee Family." Members of a permittee's immediate family, which is restricted to husband, wife, son, daughter or domestic partner, listed on the front page of the permit application. Permittee family members are not designated as guests and do not have any interest in the permit.

"Personal Watercraft." Any mechanically propelled vessel which carries one or more individuals.

"Piers." The piers located on the northern side of Sheepshead Bay, adjacent to Emmons Avenue in Brooklyn.

"Supervisory Dockmaster." Deputy Chief of the NYC Department of Parks & Recreation Marine Division. Responsible for the administration of marine division facilities and enforcement of department policies and rules under the direction of the chief dockmaster.

"Vessel." A floating craft of any kind, including but not limited to a boat, sailboat, motorboat, dinghies, canoe and kayak.

"Waiting list." A list maintained by the department of persons interested in obtaining seasonal dockage permits and mooring permits at the boat basin. This list is the sole method of obtaining a dockage or mooring permit at the boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Houseboat added City Record May 4, 2007 §1, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

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

56 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-03 Access.

The marina, piers and boat basin are open to permittees, a permittee's family, their guests, contractors and other persons who have obtained the permission of the dockmaster or department to enter. All private contractors must be properly licensed and insured, proof of which shall be registered with the marine division. In addition, the dockmaster shall establish and post regular hours during which the public shall have access to specified portions of the marina and boat basin.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-04 Guests.

Access to the marina, piers and boat basin by guests is subject to the following conditions:

(a) All guests and members of a permittee's family must comply with these rules. Anyone who fails to comply with such rules may be expelled from the facility. Anyone who repeatedly fails to comply with the rules may be permanently barred from the facility. Permittees are responsible for the conduct of their guests and family members. Violations of these rules by guests and/or a permittee's family can be grounds for termination of the permittee's permit in accordance with §3-06(g) of this chapter.

(b) In the interest of safety, the dockmaster may limit the number of guests on a vessel. In no cases shall the number of persons on board a vessel exceed the manufacturer's builders plate.

(c) A permittee must notify the dockmaster in writing of any person who will be boarding his or her vessel when the permittee is not in the marina or boat basin. Guests may not stay overnight on a vessel when the permittee is not on board without a guest pass issued by the dockmaster. The dockmaster may refuse or terminate such permission where he or she has reason to believe that there has been a transfer of the right to occupy the vessel by the permittee to the guest.

(d) If a permittee intends to have a guest remain overnight on his or her vessel while the permittee is not on board, a guest pass must be obtained from the dockmaster. This pass may be issued for up to one month. No guest may remain in the marina or boat basin for longer than one month while the permittee is absent, although the dockmaster has

discretion to extend this limit for good cause. Any guest who has not been authorized to remain overnight in the marina or boat basin will be denied access.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-05 Inspections.

All vessels in the marina, piers and boat basin may be boarded by authorized officers and employees of the department or of other City, State and Federal agencies if necessary to respond to an emergency or urgent health or safety hazard, as part of a general health or safety inspection or as otherwise permitted by applicable law. It shall be a violation of these rules for a permittee to refuse to allow, prevent or interfere with such boarding.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-06 Permits.

(a) No person shall dock, store or launch a vessel at a facility without an appropriate permit from the department and without payment of all required fees.

(b) A permit shall not be issued for a vessel which is unsafe or likely to cause injury to people or damage to property as determined by the dockmaster.

(c)(i) Dockage permits shall only be issued for vessels that the chief dockmaster determines are capable of operating in open water. All vessels (transient, seasonal, mooring or year round) must be and remain in safe operational condition. Any existing permittee with an operational and seaworthy vessel must continuously maintain an operational and seaworthy vessel. All vessels that are brought to any department facility must be seaworthy and must meet operational requirements to the original manufacturer's specifications. The chief dockmaster shall require a demonstration of a vessel's seaworthiness and compliance with the manufacturer's specifications, and shall require that any modifications to the vessel be approved by a certified naval architect to ensure compliance with original manufacturer's specifications. Before issuing a permit and otherwise upon reasonable notice, the chief dockmaster may inspect a vessel and/or require a demonstration of the vessel's operational capability in open water.

(ii) Paragraph (i) of this subdivision shall not apply to the renewal of 12 month dockage permits for vessels that were docked in the boat basin prior to May 1, 1997, unless they are sold or otherwise transferred. However, if a vessel that is covered by this exemption leaves the boat basin for any reason, then it will lose this exemption and it must return capable of operating to the original manufacturer's operating standards. Vessels that lose this exemption must be

maintained as an operating vessel for the term of any permit. In addition, on and after May 1, 2009, no exemptions will apply to any vessels, year round or otherwise, at the boat basin and all vessels must be and remain operational for the life of the permit.

(iii) For the boat basin only, the department may offer up to 52 winter season permits at any time (less any existing winter permits) first, to existing summer season permit holders in seniority order and second, to individuals on the waiting list in list order, creating 12 month or year-round dockage permits. The location of winter season slips will be determined by the chief dockmaster and allocated by seniority order. However, the chief dockmaster may change the location and/or number of these slips as necessary to ensure the safety of vessels and the boat basin. Except for vessels covered by the temporary exemption in paragraph (ii) of this subdivision, no permit, summer or winter, shall be issued to a houseboat.

(d) Dockage permits shall not be issued unless the applicant presents evidence of hull and liability insurance, either New York State registration or documentation by the U.S. Coast Guard and successful completion of a U.S. Coast Guard boating safety course or sufficient nautical experience as determined by the dockmaster. In addition, the vessel for which the permit is to be issued must be well maintained and seaworthy.

(e) A permit shall be issued to the named permittee for a particular vessel and is not transferable. If a permittee replaces a vessel, the dockmaster may only approve the new vessel after a suitable slip has been found before it may be docked pursuant to the permit. The dockmaster shall reject a replacement vessel which is not capable of operating in open water, not properly insured or which is neither New York State registered nor documented by the U.S. Coast Guard. The dockmaster may inspect and/or require a demonstration of the replacement vessel's operational capability in open water.

(f) All completed permit applications shall be submitted to the department. All outstanding fees, charges, fines and civil penalties must be paid before a renewal application will be considered.

(g) The supervisory dockmaster may revoke, terminate or refuse to renew any permit issued pursuant to this section:

(i) where the permittee or applicant for renewal has been found liable in a proceeding before the environmental control board or in a court of three or more violations of these rules or the rules set forth in chapters one and two of this title

(ii) where the applicant for renewal or permittee has failed to pay any outstanding fees, charges, fines or civil penalties within 15 days of the date of mailing of a written notice of such outstanding amount

(iii) where the permittee or applicant for renewal has been found liable in a proceeding before the environmental control board or in a court of engaging in disorderly behavior as defined in §1-04(i), paragraphs (6), (7) and (9) of chapter one of this title or (iv) as provided in subdivision i of this section, in accordance with the needs or requirements of the department or the interests of the city as determined by the supervisory dockmaster.

The supervisory dockmaster shall mail or hand deliver notice of the intention to revoke, refuse to renew or terminate a permit and the reasons therefor. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of mailing or hand delivery, be posted in a conspicuous place on the vessel.

(h) (i) A permittee or applicant for renewal may file written objections with the chief dockmaster within 10 days from the date of such mailing, delivery or posting. The objections must set forth the reasons why the permit should not be terminated or revoked or should be renewed, and include any evidence supporting the objection. The filing of objections will not prevent the chief dockmaster from barring the permittee from the facility if the chief dockmaster specifically finds that it is in the public interest to do so. After considering any objections raised by the applicant or permittee, the chief dockmaster shall make a determination whether to revoke, refuse to renew or terminate the permit

and shall provide notice of such determination to the permittee or applicant for renewal in the above manner.

(ii) A permittee or applicant for renewal may file written objections with the commissioner within 10 days from the date of the written decision of the chief dockmaster. The objections must set forth the reasons why the permit should not be terminated or revoked or should be renewed, and include any evidence supporting the objection. After considering any objections raised by the applicant or permittee, the commissioner shall make a final determination whether to affirm or reverse the chief dockmaster's determination to revoke, refuse to renew or terminate the permit and shall provide notice of such determination to the permittee or applicant for renewal in the above manner.

(i) Nothing in this chapter shall be construed to create a property right in any permit. All permits issued by the department are by their nature terminable at will by the commissioner in accordance with the needs or requirements of the department or in the interest of the city as determined by the commissioner.

(j) An applicant for renewal or a former permittee who has been found liable in a proceeding before the Environmental Control Board or in a court of violating any provision of these rules or the rules set forth in chapters one and two of this title or who has a delinquent payment record may be required to make a deposit before a renewal application will be considered.

(k) All permittees must maintain hull and liability insurance policies naming the City as an additional insured on the policy for docked vessels and provide the dockmaster with a copy of the insurance certificate. Proof of such insurance must be submitted to the dockmaster by May 1 of each year. The insurance must be valid for the length of the permit and any lapse in coverage will be considered automatic grounds for termination of the permit.

(l) The dockmaster may impose other reasonable conditions on the issuance or renewal of a permit to protect public safety or to safeguard the interests of the city.

(m) (i) Where a permit expires or is revoked, terminated or not renewed, the vessel must be removed from the facility within 10 days after written notice by the supervisory dockmaster to remove it is mailed or hand-delivered to the applicant or permittee. In the event that a mailing address is unknown or mail is returned undelivered, such notice may in lieu of such mailing be posted in a conspicuous place on the vessel. Where the vessel is not removed within 10 days, the department may remove the vessel or cause the vessel to be removed from the facility. Except where a vessel enters the facility due to an emergency, the dockmaster may immediately and without notice remove any vessel which enters or remains in the facility without an appropriate permit.

(ii) The permittee or owner shall be liable for the costs of removal and storage of the vessel, payable prior to release of the vessel. Any vessel removed from the facility which is not claimed within 30 days shall be deemed to be abandoned and shall be treated in accordance with applicable law.

(n) Every applicant and permittee must provide the dockmaster with an address in writing at which he or she may receive notice required by these rules or other applicable law. Any change in address must be reported in writing to the dockmaster within 10 days.

(o) A permittee may choose to postpone keeping a vessel at the boat basin for any particular season only once in the life of the permit. Permittees must submit a letter to the chief dockmaster at least 90 days prior to the start of the season in question stating that they will be opting to keep the vessel out of the boat basin.

(p) Permits will be immediately revoked for any of the following reasons:

(i) Conduct endangering the safety of any person.

(ii) Fire aboard a vessel that is determined to be caused by the improper upkeep of a vessel.

(iii) The improper use of heating equipment, including the storing of kerosene, installation or repair of electrical equipment by other than a qualified electrician.

(iv) A violation of §3-13.

(v) Trespassing aboard another vessel docked or moored at a marine division facility.

(vi) Violation of this subdivision by guests or immediate family members of a permit holder.

(vii) Renting or subletting of permits.

(viii) Any other action which interferes with the safe operation of division facilities, including but not limited to violations of §3-08.

(q) Any person who docks or abandons a vessel at the boat basin, marina or piers without authorization and who refuses to remove the vessel immediately upon written notice, will not be eligible to request or receive a permit or berth of any type for any facility for a minimum of 24 months. Objections to the denial of permit eligibility shall be available under subdivision h of §3-06 of this chapter.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (c) amended City Record May 4, 2007 §2, eff. June 3, 2007. [See T56 §3-23 Note 2]

Subd. (q) added City Record May 4, 2007 §3, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

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Rules of the City of New York

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

56 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-07 Waiting List.

The department shall maintain and utilize a waiting list for the issuance of seasonal dockage permits and mooring permits, which shall be available upon request from the department. Applications for the waiting list must be mailed to the Department of Parks & Recreation, Legal Office, The Arsenal, 830 5th Avenue, NY, NY 10021 att: Boat Basin Waiting List via return receipt U.S. mail on forms supplied by the department and accompanied by a processing fee of $25.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter

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Rules of the City of New York

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

56 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-08 Conduct.

(a) No person shall urinate or defecate into the water or along the docks and walkways of the facility. No person shall use a toilet in the facility which discharges into the water without marine sanitation devices approved by the New York State Department of Environmental Conservation. Composting toilet systems are not permitted. All vessels with waste holding tanks must discharge waste through the pump out station or by other methods approved by the New York State Department of Environmental Conser- vation.

(b) No person shall discharge into the water or on the docks and walkways any oil, spirits, drift, debris, inflammable liquids, rubbish or refuse.

(c) No person shall bring or park a motor vehicle on the promenade or docks without the prior written approval of the dockmaster.

(d) No person shall make or cause or allow to be made unreasonable noise in the facility so as to cause public inconvenience, annoyance, or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort, or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity. The dockmaster may restrict the outdoor use of radios, record players, compact disc players, television receivers, tape recorders and other sound reproduction devices after 10 p.m. Sunday through Thursday and after midnight on Friday and Saturday.

(e) Garbage shall be placed in plastic bags and deposited in designated receptacles.

(f) No person shall make an open flame or operate a barbecue grill in the facility, on the docks or walkways or on any vessel.

(g) No person shall store or use any machinery or equipment for welding or burning where such storage or use is prohibited by the fire code or other law or rule.

(h) No person shall ride or store a bicycle or other vehicle on the walkways and docks.

(i) Any person who engages in disorderly behavior as defined in §1-04(i), paragraphs (6), (7) and (9) of chapter 1 of this title may, in addition to any other applicable penalties, be expelled immediately from the marina facility.

(j) No running or skating on the dock.

(k) No advertising from the vessel while docked or moored at a division facility.

(l) No person may offer or provide any form of tip, money, gift or any other gratuity to any City employee at any facility. No person may procure any services from department staff except as specifically allowed under these rules. Violations of this provision will result in termination of any permit and will bar the violator from any department facility for a minimum of 24 months. Objections to termination of a permit or denial of permit eligibility shall be available under subdivision h of §3-06 of this chapter.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (l) added City Record May 4, 2007 §4, eff. June 3, 2007. [See T56 §3-23 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

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Rules of the City of New York

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

56 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-09 Docking of Vessels.

(a) Vessels must be docked at slips designated by the dockmaster. Slips will be assigned using an appropriate ratio of slip length, width, depth of water and strength of docks to a vessel's length, beam, draft and tonnage. If two vessels of equal characteristics are vying for the same slip, seniority will be the determining factor. Seniority is established by holding a valid permit and being in good standing for the longest period of time. Good standing means that all accounts with the department are paid in full. Slips may not be changed or exchanged without the prior written approval of the dockmaster. Inoperable vessels will not be assigned to slips that are designated by the Department for running vessels.

(b) All vessels shall be adequately tied to the dock and shall have sufficient fenders and dock lines to secure the vessel in all wind and weather conditions. The dockmaster may require the replacement of dock lines which he or she finds to be inadequate or, where necessary, may in his or her discretion replace the dock lines and charge the cost to the permittee or owner of the vessel.

(c) Vessels may be temporarily relocated within or outside the facility in an emergency or to accommodate construction work at the facility. When a vessel must be moved to accommodate construction work the dockmaster will give the permittee or owner 48 hours written notice to move the vessel. If the vessel is not moved within the required time the dockmaster may move the vessel or cause the vessel to be moved and charge all costs associated with moving or storage to the permittee or owner.

(d) Vessels which are improperly secured in an unassigned slip or area may be towed to the assigned slip by the Dockmaster or Marine Division staff, and the appropriate Labor Rate shall be charged to the owner of such vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

Subd. (d) added City Record Mar. 10, 2004 §1, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

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Rules of the City of New York

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

56 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-10 Condition of Vessels.

(a) All vessels in the facility and all equipment thereon shall be maintained in good order and free of any hazard to persons, vessels or facility structures. In addition, all vessels docked at the piers or the marina must be seaworthy.

(b) No structural modifications may be made to the superstructure of a vessel docked at the facility and/or permitted to use the facility. No modifications shall be made which will in any way limit the movement of the vessel, change the center of gravity to the extent that the vessel is unseaworthy, restrict the navigation by removal of the helm station, inhibit the line of sight forward from the helm, increase the height of the vessel or extend the vessel over water beyond the existing hull, or increase the load beyond the manufacturer's hull design capacity.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-11 Operation of Vessels.

(a) All vessels entering, leaving or moving within the facility shall be operated under mechanical power except in an emergency. All vessels in the facility shall be operated at speeds so as not to create a wake.

(b) A permittee holding a seasonal dockage permit must notify the dockmaster in writing prior to removing a vessel from the facility for more than 48 hours. In order to maximize access to the marina or boat basin, the dockmaster may issue a transient dockage permit for the permittee's assigned slip during such absence. A permittee who fails to notify the dockmaster of his or her scheduled return time or who returns before his or her scheduled return time may be required to remain outside the marina or boat basin until a vacant slip is available.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-12 Required Safety Equipment.

All vessels docked in the facility shall have on board at all times all equipment required by the Coast Guard, as well as for vessels longer than 25 feet:

(a) Two 10-pound CO_2 canister fire extinguishers or two dry chemical 20 pound ABC fire extinguishers approved for marine use and stored at opposite ends of the vessel.

(b) No fewer than two operable automatic smoke alarms.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-13 Utilities.

(a) Vessels docked at the marina and boat basin may only be supplied with electricity through the metered electrical hook up at its assigned slip. All electrical or utility connections must be free of defects. No person shall tamper or interfere with an electric meter. A permittee must pay all metered charges for electricity. Electrical lines shall not be rigged or positioned so as to obstruct walkways or docks.

(b) Electricity shall not be used for heating a vessel. The dockmaster may issue orders limiting or restricting the installation and use of appliances which he or she determines require quantities of electricity that may disrupt electrical service at the marina or boat basin.

(c) At those times when the department does not supply fresh water to vessels docked at the marina or boat basin, permittees may fill on-board tanks from a water line at the head of the dock. Hoses shall not be rigged or positioned so as to obstruct walkways and docks, or to cause leakage or ice accumulation.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-14 Maintenance and Use of Docks.

(a) Except as hereinafter provided, personal property shall not be stored on piers, docks or walkways. Personal property may be stored by a permittee in a dock box no larger than 30 cubic feet and no higher than 30 inches located on a fixed pier. At the marina, personal property may also be stored in dock boxes on floating docks if permission is granted by the dockmaster. The name of the permittee shall be clearly posted on the dock box. The dock box shall be positioned so as not to obstruct the walkway or impede access to the vessel. The location of the dock box shall be subject to the approval of the dockmaster. No dock boxes shall be permitted on floating piers at the boat basin.

(b) Personal property left unattended on a pier in violation of this provision, including noncomplying dock boxes, shall be subject to removal by the dockmaster. The dockmaster shall give notice to the owner of the property prior to such removal if the identity of and an address for such person are reasonably ascertainable or to the permittee of the vessel docked in the slip adjacent to the place from which the property was removed. The cost of the removal and storage of such property shall be charged to the owner or permittee and shall be payable prior to release of the property. Any personal property which is unclaimed after thirty days shall be deemed to be abandoned and shall be turned over to the police property clerk for disposal pursuant to law.

(c) It shall be unlawful to construct, reconstruct, alter, add to, extend or physically alter in any manner any slip, dock or pilings without the prior written approval of the dockmaster. Permittees may utilize boarding steps approved by the dockmaster.

(d) A permittee shall keep the dock adjacent to his or her vessel, including the finger pier, free of refuse, rubbish

and litter at all times.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

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Rules of the City of New York

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

56 RCNY 3-15

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-15 Removal of Sunken Vessel.

The dockmaster may require that any vessel which sinks be removed from the facility until appropriate repairs are made. A sunken vessel shall be removed from the facility within 48 hours after oral or written notice by the dockmaster to remove the vessel. Upon request of the permittee or owner, the dockmaster may in writing extend the time for removal of the vessel. If the vessel is not removed within the allowed time, the dockmaster may remove the vessel or cause it to be removed and may recover the cost of the removal and of storage or disposal of the vessel from the permittee or owner of the vessel. If the dockmaster determines that a sunken vessel is discharging pollutants into the water or causing any other kind of emergency, the department may take action to stop the cause of pollution and may remove or cause the vessel to be removed, without prior notice to the permittee or owner of the vessel, and recover all costs associated with removal and storage or disposal of the vessel from the permittee or owner of the vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-16

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-16 Dinghies, Kayaks and Canoes.

(a)(i) Any dinghy over 14 feet in length must be stored on the vessel with a valid permit from the department. Any dinghy over 14 feet in length and stored in water will be considered a separate vessel and require an independent transient permit. Any dinghy 14 feet or less must be stored on the vessel or in a designated dinghy area as determined by the department. Only one dinghy shall be permitted per vessel.

(ii) Kayaks and canoes may either be stored on the vessel with a valid permit from the department, or in the areas specifically designed by the department for such storage.

(b) Boat Launches: A department permit is required to launch a vessel operated by a motor at a department managed boat launch. The department will set and post specific rules at each agency managed boat launch. Failure to comply with posted rules will result in loss of access to the launch.

(c) Boating or use of a personal watercraft adjacent to any authorized bathing beach is prohibited. Use of personal watercraft is prohibited upon any waters under the jurisdiction of the department, unless the commissioner specifically authorizes use of personal watercraft in such area.

HISTORICAL NOTE

Section repealed and added City Record May 4, 2007 §5, eff. June 3, 2007. [See T56 §3-23 Note 2]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-17

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-17 Parking of Motor Vehicles.

(a) No person shall park at the garage at the boat basin or the marina parking lot without a parking permit issued by the dockmaster. Parking permits shall be issued to permittees who hold dockage, mooring or kayak permits for vessels and shall expire at the same time as that permit. If there are more permittees than available spaces, the department shall maintain a waiting list of permittees eligible for parking permits, which shall be available upon request. Parking permits are issued to the person named on the permit and are valid only for the registered vehicle identified on the permit. Parking permits are not transferable. Any assignment or attempted assignment of a garage parking permit shall result in the cancellation of such permit.

(b) No person shall remain overnight in the garage or parking lot or in a vehicle parked in the garage or parking lot. The department may remove or cause to be removed any vehicle which is parked in the garage or parking lot without a current parking permit or without payment of all required fees. The cost of towing and storage of the vehicle shall be charged to the permittee or owner of the vehicle and shall be payable prior to release of the vehicle. Any vehicle which is unclaimed after thirty days shall be deemed to be an abandoned vehicle and shall be disposed of pursuant to the procedures set forth in §1224 of the Vehicle and Traffic Law.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-18

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-18 Pets.

(a) It is a violation of these rules to keep an animal as a pet at the facility where the keeping of such animal is prohibited by the New York City Health Code or any other law or rule.

(b) The owner or other person in charge or control of a pet shall expeditiously remove, clean or clear all feces or vomit deposited by the pet from the walkways and docks.

(c) The dockmaster may order the removal of a pet from the facility where the owner or other person in charge or control of the pet has failed or refused to prevent the pet from harassing or harming other persons or has failed or refused repeatedly to remove, clear or clean feces or vomit deposited by the pet on the walkways or docks.

(d) All dogs, cats and other pets must be kept on a leash, or in appropriate carrying cases or cages, when not confined aboard a vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-19

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-19 Orders.

In addition to the orders specifically referred to in these rules, the department may issue any other orders which may be necessary or appropriate to enforce compliance with these rules or the rules set forth in chapters one and two of this title or to safeguard persons or property at the facility. It shall be a violation of these rules to fail or refuse to comply with such orders.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-20

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-20 Unlawful Use of Slip or Vessel.

No person shall permit or cause any slip or vessel or any portion thereof to be used or occupied for an illegal purpose.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-21

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-21 Penalties.

In addition to any penalties provided for in the chapter, violations of these rules shall be punishable as provided in §1-07 of chapter one of this title.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

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Rules of the City of New York

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

56 RCNY 3-22

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-22 Commercial Permits.

Commercial permits may be issued at the boat basin and marina to operators of commercial vessels upon terms to be determined by the department. The chief dockmaster is authorized to exempt holders of these commercial permits from certain rules set forth in this chapter 3.

Vessels docked under non-commercial permits may not engage in commercial activity without the express written approval of the department. This approval must be attained on an annual basis. Complete commercial plans must be provided to the department and no advertising may take place at the marina or boat basin. Commercial trips must involve 6 passengers or less and must pay the commercial pickup fee (6 passengers or less) for each trip in addition to regular dockage. Any vessel planning commercial trips involving more than 6 passengers must apply for a commercial permit and may not operate under a non-commercial permit. Operators must comply with all other department rules and regulations and other applicable rules and regulations for such vessels.

The Sheepshead Bay Piers are managed for recreational charter boat and related purposes. Only commercial vessels involved in recreational charter boat, entertainment cruise, recreational fishing or related recreational services will be offered dockage permits.

HISTORICAL NOTE

Section amended City Record May 4, 2007 §6, eff. June 3, 2007. [See T56 §3-23 Note 2]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

Section added City Record Apr. 1, 1997 eff. May 1, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

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

56 RCNY 3-23

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 3*1 RULES GOVERNING THE WEST 79TH STREET BOAT BASIN, THE SHEEPSHEAD BAY PIERS AND THE WORLD'S FAIR MARINA

§3-23 Fees.

(a) West 79th Street Boat Basin*

May 2004 May 2005 and 2006 May 2007 May 2008 andthereafter

Seasonal Dockage** Summer (May 1-October 31) $100/linear foot or $2500, whichever shall be greater. $100/linear foot or $2500, whichever shall be greater. $104/linear foot or $2,600, whichever shall be greater. $108/linear foot or $2,700, whichever shall be greater.

Winter(November 1-April 30) Current Winter Permittees' only $75/linear foot $75/linear foot $82/linear foot or $2,050, whichever shall be greater. $88/linear foot or $2,200 whichever shall be greater.

Dock & Dine (4 hour maximum) 25 feet or less $25 $25 $25 $25

26 feet or more $30 $30 $32 $32

Transient Dockage Non-commercial boats only $2.50/linear foot/day(24 hours) $2.50/linear foot/day (24 hours) $2.75/linear foot/day (24 hours) $2.75/linear foot/day (24 hours)

Kayak/canoe Storage $250/every six months $250/every six months $350 per year $350 per year

Dinghy/motor storage (Nov 1-April 30 only) Dingy must be clear of barnicles and sea growth. Engine must be

drained of fuel. No auxiliary fuel tanks allowed. $175 per winter $175 per winter

Parking Rotunda Parking Garage; Permit holders only $250/month $250/month $250/month $250/month

Slip Dockage Waiting List Application $60 $60 $75 $75

Commercial Landing Fee 30 minute maximum for loading and 30 minutes for unloading $4/linear foot $4/linear foot $4/linear foot $4/linear foot

Commercial Pickups 6 passengers or less $32 per trip $32 per trip

Sanitation WasteSystem Pump Out Commercial vessels only $75 plus labor $75 plus labor $80 plus labor $80 plus labor

Water Pump Out Per pump provided, plus labor $65 $65 $65 $65

Labor Rate $75/hour $75/hour $75/hour $75/hour

Transient Electric 30 amp $10/day $10/day $10/day $10/day

50 amp100 amp $20/day$35/day $20/day$35/day $20/day$35/day $20/day$35/day

Electricity For permit holders only $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour

Parking Pass Daily $10 $10 $10 $10

Towing OutsideMarina Non commercial boats only $150/hour $150/hour $150/hour $150/hour

PassengerPickup/Dropoff Non-commercialboats only50 feet or less $10 $10 $10 $10

51 feet or more $25 $25 $25 $25

Key Deposit or replacement $10.00 $10.00

Team Canoe Storage Summer only; competition canoes $750.00 per boat $750.00 per boat $750.00 per boat $750.00 per boat

* No cash will be accepted for transactions. All boat basin transactions must take place in the marina dockhouse. No financial transaction may take place on the piers or in a private boat.

** Depending on weather, summer dockage customers may be allowed, at their request, to extend their stay into November or to arrive early in April. Extensions will be approved and billed on a weekly basis and the pro-rated bill will be based on the summer dockage six month permit. Extensions are solely at the discretion of the department.

(b) World's Fair Marina***

May 2004 May 2005 May 2006 May 2007 andthereafter

Summer Dockage** 20 feet or less21 to 26 feet27 to 35 feet36 to 45 feet46 to 65 feet66 feet or greater $1250$65/linear foot$68/linear foot$72/linear foot$88/linear foot$110/linear foot $1300$68/linear foot$71/linear foot$76/linear foot$93/linear foot$115/linear foot $1300$68/linear foot$71/linear foot$76/linear foot$93/linear foot$115/linear foot $1325$70/linear foot$73/linear foot$78/linear foot$95/linear foot$118/linear foot

Commercial Charter Boat May 1 to October 31November 1 to April 30 $120/linear foot$40/linear foot $130/linear foot$50/linear foot $130/linear foot$50/linear foot $135/linear foot$52/linear foot

Winter Storage Water $28/linear foot $35/linear foot $35/linear foot $35/linear foot or $700 whichever shall be greater

Land Spots to be determined by seniority $36/linear foot $43/linear foot $43/linear foot $46/linear foot or $920 whichever shall be greater

Dock & Dine (4 hour maximum) 25 feet or less26 feet or more $20$25 $20$25 $20$25 $20$25

Transient Dockage Non-commercial boats only $2/linear foot/day $2/linear foot/day $2/linear foot/day $2/linear foot/day

Sporting Events/Concerts in park (event duration only) $1/linear foot $1/linear foot $1/linear foot $1/linear foot

Transient Electricity 30 amp50 amp100 amp $7/day$12/day$40/day $7/day$12/day$40/day $7/day$12/day$40/day $7/day$12/day$40/day

Electricity For permit holders only $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour $0.20/kilowatt hour

Commercial Landing Fee 30 minute maximum for loading and 30 minutes for unloading $3/linear foot $3/linear foot $3/linear foot $3/linear foot

Passenger Pickup/Drop-off 25 feet or less26 to 50 feet51 feet or more $5$10$25 $5$10$25 $5$10$25 $5$10$25

SanitationSystem Pump Out (commercial vessels only) $60 plus labor $75 plus labor $75 plus labor $80 plus labor

Water Pump Out Per pump provided $40 plus labor $40 plus labor $40 plus labor $45 plus labor

Labor Rate $65/hour $75/hour $75/hour $75/hour

Parts Boat repair, maintenance Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP) Sold at Manufacturer Suggested Retail Price (MSRP)

Crane ServiceTravel LiftForkliftHaul Out $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot $100/hour$100/hour$90/hour$2.50/linear foot

Launch Using travel lift $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Move One Away $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Block $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Load on Trailer Using travel lift $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Pressure Wash Bottom $2.50/linear foot $2.50/linear foot $2.50/linear foot $2.50/linear foot

Step or Unstep Mast $5/linear foot $5/linear foot $5/linear foot $5/linear foot

Towing Inside Marina $65/hour $75/hour $75/hour $75/hour

Towing OutsideMarina $150.00/hour $150.00/hour $150.00/hour $150.00/hour

BottomPainting 30 feet or less31 feet or more $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot $13.75/linear foot$14.75/linear foot

Team Canoe Storage Summer $500.00 per boat $500.00 per boat $500.00 per boat $500.00 per boat

Winter $250.00 per boat $250.00 per boat $250.00 per boat $250.00 per boat

Key Deposit or replacement $10.00 $10.00 $10.00 $10.00

** Depending on weather, summer dockage customers may be allowed, at their request, to extend their stay into November. Extensions will be approved and billed on a weekly basis and the pro-rated bill will be based on the summer dockage six month permit. Extensions are solely the discretion of department.

***No cash will be accepted for transactions.

(c) Sheepshead Bay Piers

Yearly Dockage $120.00/linear foot on or before May 2007;

$125.00/linear foot on and after May 2007

Transient Rate**** Non-commercial vessels: $2 foot per day: up to 24 hours$20: 4 hours dock and dine

Commercial Vessels: Loading and unloading$3 per foot: 30 minutes maximum loading and unloading$3 per foot for each hour beyond 30 minutes loading/unloading

Commercial Vessels: Daily Transient Dockage Rate$2 foot per day: up to 24 hours

**** There will be no cash transactions.

HISTORICAL NOTE

Section amended City Record May 4, 2007 §7, eff. June 3, 2007. [See Note 2]

Section amended City Record Mar. 10, 2004 §2, eff. Apr. 9, 2004. [See Note 1]

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See Chapter 3 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 10, 2004:

These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The rules provide an updated fee schedule through the 2005 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended in part to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve

facility administration.

2. Statement of Basis and Purpose in City Record May 4, 2007: These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under §§389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. The rules provide an updated fee schedule. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended in part to provide funding for the Department to sustain appropriate staffing levels and improve facility administration. In addition, the rules provide for additional winter permits at the Boat Basin to address demand for such permits and prohibit houseboats starting in 2009 to improve safety and to increase recreational use at the Boat Basin.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003 [See Note 3]; Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000, See Note 2. Chapter added City Record Apr. 1, 1997 eff. May 1, 1999. [See Note 1]

NOTE 1. Statement of Basis and Purpose in City Record Apr. 1, 1997: The new rules establish the process for obtaining permits to dock vessels at the 79th Street Marina, establish standards to be met by applicants to obtain such permits and set forth the duties and responsibilities of permittees, guests and members of the public who use the marina. These rules inform permittees and other users of the marina of the regulations governing the management of the marina and the standards of conduct applicable to the actions of all marina users. The department expects that the rules will result in increased public use of the marina. 2. Statement of Basis and Purpose in City Record Apr. 14, 2000: The Department of Parks & Recreation ("Parks") has amended chapter 3 of its rules to incorporate the Sheepshead Bay Piers ("Piers") and the World's Fair Marina ("Marina"). The Piers were transferred to Parks from the Department of Business Services, and permits for vessel operators are now issued by Parks' Revenue Division. The Marina was formerly a Parks concession, but after the default of the former concessionaire in October 1999, Parks' Revenue Division also began issuing permits directly to vessel operators. These changes were not included in Parks' regulatory agenda because the premature termination of the concessionaire was not expected. 3. Statement of Basis and Purpose in City Record Feb. 12, 2003: This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation.

The amended chapters incorporate the establishment of Parks' Marine Division which is responsible for managing, operating and maintaining division facilities and enforcing Park Rules & Regulations at such facilities. The revisions improve security, safety and operational efficiency at the facilities. A formal appeals process has been included allowing permittees to appeal dockmaster determinations to revoke, terminate or refuse to renew any permit pursuant to these chapters. The rules also provide an updated fee schedule through the 2003 winter and summer seasons. The increased fees are essential to ensure the continued usage and enjoyment of marina facilities for recreational purposes and are intended to provide funding for the Department of Parks and Recreation to sustain appropriate staffing levels and improve facility administration. Moreover, these fees are in line with other municipalities and are far below the fees charged by marinas operated by for-profit establishments.

Rules of the City of New York

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

56 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-01 Application.

These rules apply to the permissible use of mooring fields in Sheepshead Bay, Great Kills Harbor and adjacent to the West 79th Street Boat Basin that are under jurisdiction of the department. These rules supplement the general rules which govern the use of city park land set forth in chapters one and two of this title. To the extent that they are not inconsistent herewith, the rules set forth in chapters one, two and three of this title apply to the use of the mooring fields.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3.

Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-02 Definitions.

"Boat Basin." The West 79th Street Boat Basin located in Riverside Park on the east bank of the Hudson River at West 79th Street in Manhattan.

"Chief Dockmaster." Chief of the NYC Department of Parks & Recreation Marine Division. The person appointed by the commissioner that is responsible for the overall administration of division facilities and enforcement of department policies and rules.

"Commercial Permit." A permit to store, dock or launch a vessel used for commercial operations.

"Commissioner." The Commissioner of Parks and Recreation.

"Department." The department of Parks and Recreation.

"Dockmaster." The person who administers, manages or maintains the marina, piers and boat basin at the direction of the supervisory or chief dockmaster.

"Emergency." Any situation which the department determines threatens imminent personal injury or property damage.

"Marina." The World's Fair Marina in Flushing Bay, located in Flushing Meadows Corona Park, Queens.

"Marine Division." Department of Parks and Recreation division responsible for managing, operating and

maintaining recreational and commercial vessels usage at, but not limited, to division facilities and mooring fields.

"Mooring fields." Areas that are designated by the United States Coast Guard as Special Anchorage Areas and are under the jurisdiction of the department in Sheepshead Bay and Great Kills Harbor and the mooring fields adjacent to the 79th Street Boat Basin.

"Permit." A permit to moor a vessel at a designated position in a mooring field.

"Permittee." The person whose name appears on a permit.

"Piers." The piers located on the northern side of Sheepshead Bay, adjacent to Emmons Avenue in Brooklyn.

"Supervisory Dockmaster." Deputy Chief of the NYC Department of Parks & Recreation Marine Division. Responsible for the administration of division facilities and enforcement of department policies and rules under the direction of the chief dockmaster.

"Vessel." A floating craft of any kind including but not limited to a boat, sailboat, motor boat, dinghy, canoe and kayak.

"Waiting list." A list of persons interested in obtaining permits, which shall be maintained by the department.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special

anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-03 Inspections.

All vessels moored in the mooring field may be boarded by authorized officers of the department or of other city, state and federal agencies if necessary to respond to an emergency, or as otherwise permitted by applicable law. It shall be a violation of these rules for a permittee to refuse to allow, prevent or interfere with such boarding.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section reentitled by Law Department per Charter §1045(b), originally titled "Boarding of Vessels".

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3.

Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-04 Permits.

(a) No person shall place a mooring or moor a vessel in a mooring field without a permit from the department.

(b) A permit shall authorize the use of a mooring that meets the requirements of subdivision (a) of §4-07 of this chapter, the location of a mooring at a particular position in the mooring field, and the mooring of a particular vessel identified by size, type and registration number.

(c) A permit shall be issued to the permittee named thereon and is not transferable.

(d) A permit shall not be issued for a vessel which is likely to cause injury to people or damage to property as determined by the department or for a vessel which exceeds 65 feet in length.

(e) A permit will not be issued to an applicant who has any outstanding fees, charges, fines or civil penalties due the department.

(f) The applicant for a permit must be the owner or lessee of the vessel. A permit shall not be issued unless the applicant presents evidence that the vessel is (1) registered with the New York State Department of Motor Vehicles, or (2) registered with the appropriate agency of another state or (3) documented by the U.S. Coast Guard, or (4) the applicant has established vessel ownership and participation in the Boat Anti-Theft Program administered by the Police Department of the City of New York. If the applicant is not the registered or documented owner of the vessel, the applicant must present evidence that he or she is the lessee of the vessel. If a permittee intends to replace a vessel, he or she must notify the department in advance so the department can determine whether the existing location and mooring

are acceptable for the new vessel. The new vessel may not be moored until the department grants a new permit. The department shall reject a replacement vessel that is not registered with the Department of Motor Vehicles or registered with the appropriate agency of another state or documented by the U.S. Coast Guard, or where the applicant has not established vessel ownership and participation in the Boat Anti-Theft Program of the Police Department of the City of New York.

(g) An applicant who owns or leases more than one vessel may apply for more than one permit; applications for additional permits will be placed on the department's waiting list until the department determines that the number of vacant mooring positions exceeds the number of applications.

(h) Notwithstanding the provisions of subdivisions (f) and (g) of this section, the department may reserve a limited number of permits for moorings and issue them to (i) persons for use in connection with special events or other activities that promote the enjoyment by the public of the water for educational, recreational or entertainment purposes, or (ii) yacht clubs and marinas having water frontage in Sheepshead Bay or Great Kills Harbor for the accommodations of guest vessels of such yacht clubs and marinas. No vessel shall be moored at such moorings for the accommodation of guest vessels of such yacht clubs or marinas for more than 15 consecutive days. Any such person, yacht club or marina that is issued a permit pursuant to this subdivision shall be subject to the provisions of this chapter to the same extent and in the same manner as the owner or lessee of a vessel who is issued a permit pursuant to this chapter.

(i) The term of a permit issued for the Sheepshead Bay or Great Kills Harbor mooring fields is for one year commencing May 1. The term of a permit issued for the West 79th Street Boat Basin mooring fields is for six months commencing May 1. The department may also issue transient permits for a term of one week or one day.

(j) Permittees must submit a written application for the renewal of permits issued for a term of one year no earlier than 90 days and no later than 30 days prior to the expiration of an existing permit. If a permittee does not use the mooring for at least four of the months of May through October, he or she will not be given priority for a renewal unless written notification of extended absence is given to the department prior to July 1. All outstanding fees, charges, fines and civil penalties due the department must be paid before a renewal application will be considered.

(k) The chief dockmaster may revoke, terminate or refuse to renew any permit issued pursuant to this chapter (1) where the applicant for renewal or permittee has been found liable in a proceeding before the Environmental Control Board or in a court of violating any provisions of these rules or the rules set forth in chapters one and two and, in the case of vessels moored adjacent to the boat basin and piers, chapter three of this title, (2) where the applicant for renewal or permittee has failed to pay any fees, charges, fines or civil penalties within ten days of receipt of written notice from the department or (3) as provided in subdivision 1 of this section, in accordance with the needs or requirements of the department or the interests of the city as determined by the commissioner. The department shall send by certified mail notice of the intention to revoke, terminate, or refuse to renew a permit and the reasons therefore. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of mailing, be posted in a conspicuous place on the vessel. A permittee or applicant for renewal may file written objections with the commissioner within 15 days from the date of such mailing or posting, whichever is later. After considering any objections raised by the applicant or permittee, the commissioner shall make a final determination whether to affirm or reverse the chief dockmaster's determination to revoke, terminate or refuse to renew the permit and shall provide notice of such determination to the permittee or applicant in the manner provided herein.

(l) Nothing in this chapter shall be construed to create a property right in any permit. All permits issued by the department are by their nature terminable at will by the commissioner in accordance with the needs or requirements of the department or in the interests of the city as determined by the commissioner.

(m) The department may impose reasonable conditions on the issuance of a permit to protect public safety and to safeguard the interests of the city, including but not limited to a requirement that the permittee or applicant have his or her mooring inspected or obtain appropriate insurance and submit satisfactory evidence of having complied with such

conditions.

(n) Where a permit is revoked, terminated or not renewed, the vessel and all parts of the mooring, including anchors, chains and buoys, must be removed from the mooring field within 30 days after notice by the department to remove the same is sent by certified mail to the applicant or permittee. In the event that a mailing address is unknown or mail is returned undelivered, such notice may, in lieu of such mailing or hand delivery, be posted in a conspicuous place on the vessel. Where the vessel and mooring are not removed within 30 days after the mailing or posting of such notice, whichever is later, the department may remove the vessel and mooring or cause the same to be removed from the mooring field. The permittee or owner shall be liable for the costs of removal and storage of the vessel and mooring, payable prior to release of the same. Any vessel or mooring removed from the mooring field that is not claimed within 30 days may be deemed to be abandoned and may be turned over to the police property clerk for disposal in accordance with applicable law.

(o) Every applicant and permittee must provide the department with an address in writing at which he or she may receive notice required by these rules or other applicable law. Any changes in address must be reported in writing to the department within 10 days.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find, pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-05 Waiting List.

The department shall maintain a waiting list for the issuance of permits, which shall be available upon request from the department.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

130 of 158 DOCUMENTS

Rules of the City of New York

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

56 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-06 Conduct.

(a) No person at the Sheepshead Bay or Great Kills Harbor mooring fields shall use a toilet that discharges into the water without marine sanitation devices approved by the New York State Department of Environmental Conservation. No person at the boat basin mooring fields shall use a toilet that discharges into the water. Use of composting toilet systems are not permitted in the mooring fields. All vessels at the boat basin must have waste holding tanks and discharge waste through the pump out station.

(b) No person shall discharge into the water any oil, spirits, drift, debris, inflammable liquids, rubbish, refuse or untreated human waste.

(c) Any person who engages in disorderly behavior as defined in paragraph 6, 7 or 9 of subdivision 1 of §1-04 of chapter 1 of this title may, in addition to any other applicable penalties, be expelled from the mooring fields.

(d) No person shall make or cause or allow to be made unreasonable noise in the mooring field so as to cause public inconvenience, annoyance or harm. Unreasonable noise means any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivity or injures or endangers the health or safety of a reasonable person of normal sensitivity. The department may restrict the outdoor use of radios, record players, compact disc players, television receivers, tape recorders and other sound reproduction devices after 11 p.m. Sunday through Thursday and after 12 p.m. on Friday and Saturday.

(e) No person shall make an open fire on any vessel while alongside any dock or within the confines of the boat basin. Vessels that are fitted with a device specifically designated for use on a vessel may be used in accordance with

the manufacturer's instructions for cooking on deck but only in the mooring field.

(f) No advertising shall be displayed from the vessel in the mooring field.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-07 Mooring of Vessels.

(a) All vessels moored at the boat basin shall be secured to the mooring provided by not less than two mooring bridles. All vessels at the Sheepshead Bay or Great Kills Harbor mooring fields shall be secured by moorings meeting the following requirements:

(1) The anchor, chain and pendant of all moorings shall meet the following requirements:

(A) the anchor scope shall be at least three times the distance from the land under the water of the harbor to mean high water;

(B) the pendant safe working load shall be at least four times the anchor weight;

(C) the anchor type shall be either mushroom or navy;

(D) (i) if the vessel length is 15 feet or less, each anchor shall weigh at least 100 pounds and be connected to a buoy by a metal chain no less than $^{5}/_{16}$ inches in diameter, and the pendant shall be at least 4 feet in length; (ii) the vessel length is greater than 15 feet but not greater than 21 feet, each anchor shall weigh at least 150 pounds and be connected to a buoy by a metal chain no less than $^{3}/_{8}$ inches in diameter, and the pendant shall be at least 8 feet in length; (iii) if the vessel length is greater than 21 feet but not greater than 26 feet, each anchor shall weigh at least 200 pounds and be connected to a buoy by a metal chain no less than $^{3}/_{8}$ inches in diameter, and the pendant shall be at least 10 feet in length; (iv) if the vessel length is greater than 26 feet but less than or equal to 65 feet, each anchor shall weigh no less than 10 pounds per foot of vessel length and be connected to a buoy by a metal chain no less than $^{1}/_{2}$ inch in

diameter for each anchor weighing no more than 400 pounds, or not less than $^{5}/_{8}$ inches in diameter for each anchor weighing more than 400 pounds, and the pendant shall be at least 10 feet in length.

(2) Moorings in the special anchorage area in Sheepshead Bay shall be secured by two anchors which shall be placed as indicated in figure 1. Moorings in all other mooring fields shall be secured by one anchor, provided, however, that the department may require the use of two anchors in any mooring field in order to provide additional positions at which moorings may be located or to enhance the safety of existing mooring locations.

(3) Mooring buoys shall be of a buoyant material sufficient to make at least one foot of the buoy visible above the water line.

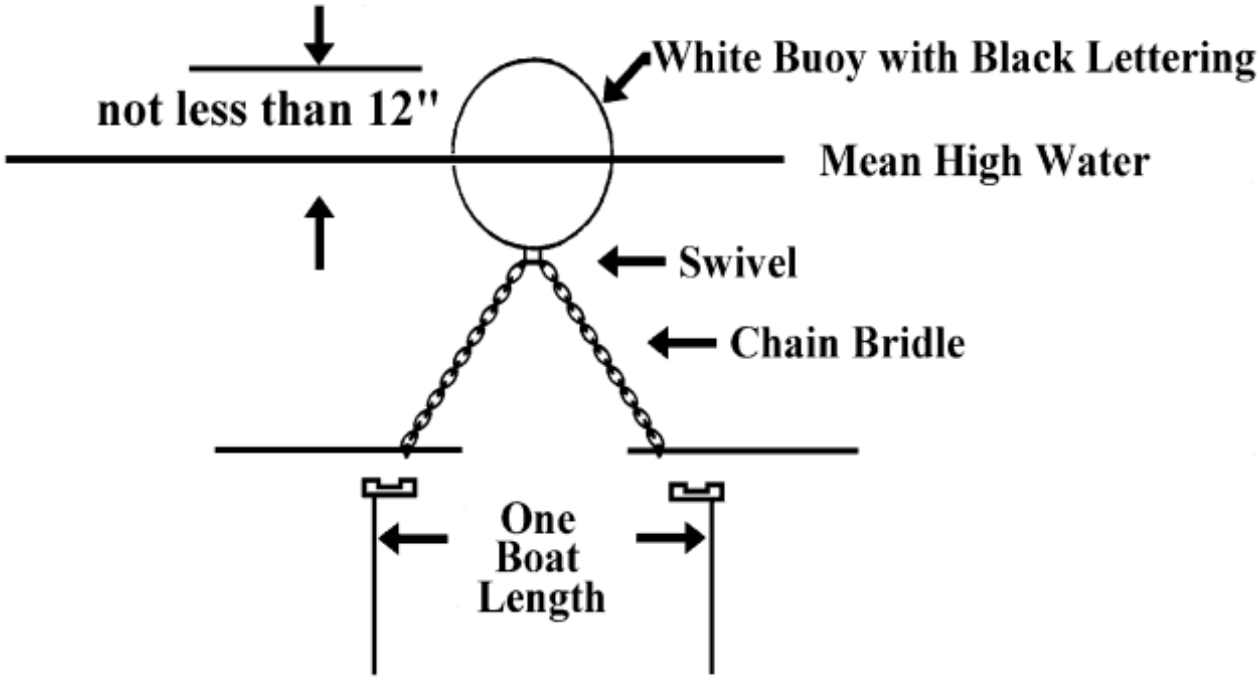

Figure 1.

(4) Buoys shall be painted with the permit number and the mooring location in black block letters no less than three inches high.

(5) Fixed mooring piles or stakes are not permitted.

(b) Vessels must be moored at locations designated by the department. The location assigned to the permittee shall be determined by the department based on vessel size, type, water depth and safety considerations. No vessel shall be moored in such a manner as to interfere with the use of a duly authorized mooring location or regular traffic channel. Mooring locations may not be changed or exchanged without the prior written approval of the department.

(c) All vessels shall be adequately tied to their moorings and shall have sufficient lines to secure the vessel in all

wind and weather conditions. The department may affix additional lines as necessary to ensure the safety of people or property.

(d) All parts of the mooring, including the buoys, anchors and chains, shall be supplied and installed by the permittee and shall remain the property of the permittee at the mooring fields at Sheepshead Bay and Great Kills Harbor.

(e) Moorings shall be inspected for deterioration at least every two years and repaired or replaced if necessary. The department may require, as a condition of renewing a permit, evidence that an inspection has been made, including a description by the person who made the inspection of the condition of the mooring and the qualifications of such person to make such inspection.

(f) Vessels and moorings may be temporarily relocated in an emergency or to accommodate dredging or other work in the mooring field. When a vessel or mooring must be removed to accommodate such work, the department will give the permittee or owner 45 days written notice to remove the vessel or mooring. If the vessel or mooring is not removed within 45 days, the department may remove the vessel and mooring, or cause the vessel or mooring to be removed and recover all costs associated with moving and storage from the permittee or owner.

(g) Vessels which are improperly secured to the wrong mooring or area may be towed to the assigned mooring by the Dockmaster or Marine Division staff and the appropriate Labor Rate shall be charged to the owner of such vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

Subd. (g) added City Record Mar. 10, 2004 §3, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

FINDING OF SUBSTANTIAL NEED FOR IMMEDIATE EFFECTIVENESS OF RULE I hereby find,

pursuant to §1043(e)(1)(c) of the City Charter, that there is a substantial need for the implementation of rules, upon publication, for the regulation of mooring fields in Sheepshead Bay and Great Kills Harbor, special anchorage areas that were administered by the United States Coast Guard until this year. These rules will also apply to the mooring fields at the 79th Street Marina in Manhattan.

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-08 Condition of Vessels.

All vessels in the mooring field and all equipment thereon must be maintained in good order and free of any hazard to persons or vessels. All vessels in the mooring field shall comply with all federal, state and local laws, rules and regulations concerning the condition of vessels and equipment.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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56 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-09 Operation of Vessels.

No vessel within a mooring field may be navigated at a speed in excess of 5 miles per hour. Any person operating a vessel in a mooring field shall comply with all federal, state and local laws, rules and regulations concerning the safe operation of vessels, including the Inland Navigational Rules (33 U.S.C. §2000 et seq.).

HISTORICAL NOTE

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

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56 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-10 Required Safety Equipment.

All vessels in the mooring fields must have on board at all times all equipment required by the Coast Guard or by any other federal, state or local law, rule or regulation.

HISTORICAL NOTE

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APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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56 RCNY 4-11

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-11 Removal of Sunken Vessels.

A sunken vessel shall be removed from the mooring fields within 48 hours after oral or written notice by the department to remove the vessel. Upon request of the permittee or the owner of the vessel, the department may, in writing, extend the time for removal of the vessel. If the vessel is not removed within the allowed time, the department may remove the vessel or cause it to be removed and may recover the cost associated with removal and of storage or disposal of the vessel from the permittee or owner of the vessel. If the department determines that a sunken vessel is discharging pollutants into the water or causing any other kind of an emergency, the department may take action to stop the cause of pollution and may remove or cause the vessel to be removed, without prior notice to the permittee or owner of the vessel, and recover all costs associated with removal and storage or disposal of the vessel from the permittee or owner of the vessel.

HISTORICAL NOTE

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City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Expedited implementation is necessary because the Department of Parks & Recreation needs to begin processing applications and issuing permits immediately so that permittees will be able to retain their boats in the mooring fields when their Coast Guard permits expire on May 1. Given the tight deadline that the Department faces, immediate implementation of the mooring field rules will enhance our ability to serve the public and especially the boating community.

Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-12 Dinghies, Kayaks and Canoes.

A permittee may store one dinghy, kayak or canoe under 14 feet in length on or alongside the permitted vessel without obtaining a separate permit for such dinghy, kayak or canoe. In all other cases, including but not limited to personal watercraft, a separate permit must be obtained for each vessel.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Section added City Record Apr. 16, 1997 eff. May 16, 1997. [See Chapter 4 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

Recently, the U.S. Coast Guard announced its intention to cease issuing permits for moorings in the Special Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

City of New YorkParks & Recreation The ArsenalCentral ParkNew York, New York 10021Henry J. SternCommissioner

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-13

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-13 Orders.

The department may issue any orders which may be necessary or appropriate to enforce compliance with these rules or the rules set forth in chapters one and two and, in the case of vessels moored adjacent to the marina, piers or boat basin, chapter three of this title. It shall be a violation of these rules to fail or refuse to comply with such orders.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-14 Unlawful Use of Vessel.

No person shall permit or cause any vessel or any portion thereof to be used or occupied for an illegal purpose.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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Anchorage Areas in Great Kills Harbor and Sheepshead Bay. The Department of Parks & Recreation has assumed jurisdiction over these areas, and effective immediately will begin issuing permits in these areas. Consequently, the Department must establish rules to govern the issuance of permits for these moorings, as well as to regulate conduct in the mooring fields. These rules are based on the rules utilized by the U.S. Coast Guard. These rules will also apply to anchorage areas north and south of the 79th Street Marina.

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-15 Penalties.

In addition to any penalties provided for in this chapter, violations of these rules shall be punishable as provided in §1-07 of chapter one of this title.

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section amended City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

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[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

56 RCNY 4-16

RULES OF THE CITY OF NEW YORK

Title 56 Department of Parks and Recreation

CHAPTER 4*1 RULES GOVERNING MOORING FIELDS UNDER THE JURISDICTION OF THE DEPARTMENT

§4-16 Commercial Mooring Permits; Fees.

(a) **Commercial Mooring Permits.** Commercial mooring permits may be issued at the boat basin to operators of commercial vessels upon terms to be determined by the commissioner. The commissioner is authorized to exempt holders of these commercial permits from the rules set forth in chapter 3 and chapter 4.

(b) **Fees.**

As of May 1, 2004 As of May 1, 2005 As of May 1, 2006 As of May 1, 2007 and thereafter

Mooring at West 79th Street Boat Basin $30/day$180/week$1500/season $30/day$180/week$1500/season $30/day$180/week$1500/season $30/day$180/week$1550/season

HISTORICAL NOTE

Section amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. [See T56 Chapter 3 footnote]

Section added City Record Apr. 14, 2000 eff. May 14, 2000. [See T56 Chapter 3 footnote]

Subd. (b) amended City Record May 4, 2007 §8, eff. June 3, 2007. [See T56 §3-23 Note 2]

Subd. (b) amended City Record Mar. 10, 2004 §4, eff. Apr. 9, 2004. [See T56 §3-23 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Feb. 12, 2003 eff. Mar. 14, 2003. See footnote to T56 Chapter 3. Chapter amended City Record Apr. 14, 2000 eff. May 14, 2000. See footnote to T56 Chapter 3. Chapter added City Record Apr. 16, 1997 eff. May 16, 1997; Note other provisions of City Record Apr. 16, 1997:

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Henry J. SternCommissioner, Parks & RecreationApril 4, 1997

APPROVED:Rudolph W. GiulianiMayorApril 9, 1997

Rules of the City of New York

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

57 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-01 Meetings.

Regular meetings of the Art Commission shall be held on the second Monday of each month, except August, at 12:30 P.M., unless otherwise published in the City Record. Special meetings may be called by the President or Executive Director at any time, and may be called on request of three or more members of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-02 Notice of Meetings to Commission Members.

Written notice of all regular meetings shall be mailed to members of the Commission at least four days in advance of such meetings. Notice of special meetings shall be given as long in advance as the President or Executive Director may find practicable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-03 Quorum.

Six Commissioners shall constitute a quorum.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-04 Calendar of Submissions.

The calendar of submissions shall be closed two weeks in advance of the monthly meeting date. Submissions may be referred to a committee appointed by the Executive Director. No submission shall be acted on that is not included in the calendar.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-05 Hearings on Pending Submissions by a Special Committee.

Hearings on pending submissions may be held by a special committee in charge of the submission. In such cases hearings will be subsequently held by the Commission at the request of such committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-06 Referral of Matters Presented Between Meetings to a Committee.

Any matter presented between meetings may be referred by the President or Executive Director to a Committee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-07 Notice of Committee Appointment.

A written notice of appointment shall be sent to each member of every committee appointed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-08 Calendar of Committees.

A calendar of all committees shall be kept and called for at every regular meeting of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-09 Submission of Matters for Preliminary Approval.

Every matter required by the City Charter to be submitted to the Art Commission shall be presented first for preliminary approval, but the Commission in its discretion may give final approval to any matter submitted. Every matter shall be submitted on one of the forms furnished by the Commission, and shall include such materials as set forth in the Review Guidelines and Gift Guidelines.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-10 Additional Materials Required.

For every submission, the Executive Director shall decide whether the sketches, plans, etc., are provisionally sufficient. However, the Commission may subsequently require materials in addition to those specified under §1-10. The Executive Director shall procure or provide such additional matter as deemed necessary for the record and proper certification of the Commission's action.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-11 Records Kept in the Office of the Commission.

The original of every letter, communication, document, photograph, plan, sketch, print, etc., addressed to the Commission, or relating to matters before it, shall be kept in the office of the Commission. When it is necessary to duplicate or lend such materials, any sketch, plan, or other document may be removed for such purpose with the approval of the Executive Director or designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-12 Records Kept of Submissions and Certificates.

For every matter submitted to the Commission for approval, the Commission shall retain the original submission (including one set of plans and other materials) and a copy of the certificate which records the Commission's action. The Commission certifies such action by returning to the applicant a duplicate set of submitted materials and the original certificate. In case materials that are not picked up in 30 days will be disposed of at the Executive Director's discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-13 Review and Approval of Minutes; Sending of Certificates.

The minutes of each meeting shall be reviewed for possible correction by the Executive Director, and approved by the Commissioners at the next scheduled monthly meeting. Certificates are sent to the departments or other interested applicants.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-14 Notice of Meetings to City Officials Having Jurisdiction.

In each case where the matter submitted comes within the jurisdiction of the head of a city department or agency, notice shall be given to such official or his or her designee so that he or she will be able to attend the meeting at the time of consideration.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-15 Approval of Official Having Jurisdiction.

No submission shall be approved by the Art Commission unless it shall have been signed by the head of the department, corporation, or person having jurisdiction and official charge of the matter, or unless the authority of any other person or persons making such submission shall have been evidenced by the submission of a written statement of the head of such department or of such corporation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

156 of 158 DOCUMENTS

Rules of the City of New York

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

57 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-16 Submission of Samples of Materials to be Used.

For final approval, samples of materials which it is proposed to use on the exterior (or elsewhere if called for) of structures to be erected from approved designs, shall be submitted to the Commission, and no work shall be done until such samples have been approved in writing. Samples of materials intended for use shall be submitted showing proposed surface treatment, color and texture and such samples shall be returned to the submitting department after approval, as noted in §1-12.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

57 RCNY 1-17

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-17 Certification for Final Payment.

A request from any department for certification for final payment by the Art Commission under Chapter 37 of the New York City Charter should be made only after the conditions prescribed in the resolution of approval are complied with, and such request shall be made in writing accompanied by 8 × 10 inch photographs, preferably black-and-white, of the structure or work of art for which the certificate is desired. Any certification of a project for final payment shall be first approved in writing by the Executive Director or President of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

158 of 158 DOCUMENTS

Rules of the City of New York

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

57 RCNY 1-18

RULES OF THE CITY OF NEW YORK

Title 57 Art Commission

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

§1-18 Amendment of Rules.

A motion to amend these Rules may be voted on at any regular meeting of the Commission only after the Executive Director has sent a copy of the proposed amendment to each Commissioner prior to the meeting of the Commission. An amendment may be passed by a simple majority vote.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

58 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-01 Applicability.

These Regulations shall apply to all applications for artist's certification submitted to the Department of Cultural Affairs (the "Department") for purposes of occupancy of joint living-work quarters for artists in zoning districts M1-5A and 5B.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

58 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-02 Artist's Certification Committee and Appeals Board.

(a) **Qualifications, powers and duties.** (1) **The Committee.** The Commissioner of the Department of Cultural Affairs (the "Commissioner") shall appoint an Artist's Certification Committee (the "Committee"), the members of which shall review and make recommendations regarding the disposition of applications for certification. Such committee shall consist of up to 18 members, none of whom shall be a member of the staff of the Department. There shall be, if feasible, at least one member appointed from each of the following disciplines: painting, sculpture, crafts, photography, film/video, dance, music, writing and performance/theater. The remaining members of the Committee may be arts educators, arts administrators or representatives of arts or other community organizations. Unless otherwise waived by the Commissioner, all members shall reside or work in New York City.

(2) **The Appeals Board.** In the event that pursuant to §1-06(b), an appeal is taken of the Commissioner's denial of a particular application, the Commissioner shall appoint an Artist's Certification Appeals Board (the "Appeals Board") to make the initial recommendation with regard to such appeal. The Appeals Board shall consist of at least 6 members, selected from a list prepared on a yearly basis of individuals

(i) engaged in the disciplines referred to in §1-02(a)(1) or

(ii) otherwise engaged in the arts as arts educators, arts administrators or representatives of arts or other community organizations, none of whom shall have been members of the Committee at the time such application was initially reviewed. Such Appeals Board shall contain if possible at least 3 members engaged in the disciplines referred to in §1-02(a)(1), and in particular, 1 to 2 members engaged in the art form for which the applicant has applied, and one member of the staff of the Department other than the Artist's Certification Coordinator referred to in §1-03. Unless

otherwise waived by the Commissioner, any person appointed by the Commissioner to be a member of any Appeals Board shall reside or work in New York City.

(b) **Term.** (1) **Length.** The members of the Committee shall serve for a three year term and shall be divided into three classes consisting of not more than six members each.

(2) **New appointments.** Each year in June, the Commissioner shall appoint members to fill the places of the class whose term expires in that year, and such newly appointed members shall serve for a term which begins on September 1 of that year and expires on August 31, three years hence. Members may be re-appointed for one additional 3-year term but no member who has served two consecutive three-year terms may serve an additional term until at least one year after the expiration of his or her second term.

(3) **Filling vacancies for an unexpired term.** The Commissioner may at any time fill any vacancy among the members of the Committee for the unexpired term of such vacant position, but such appointment shall be subject to the requirement set forth in §1-02(a)(1) as to representation of each of the media referred to in such section.

(4) **Resignations and leaves.** A member may resign at any time prior to the expiration of his or her term by delivering a letter of resignation to the Commissioner, and such resignation shall be effective as of the date specified in such letter. A leave of absence not to exceed one year may be taken by any member.

(5) **Removal of Committee members.** The Commissioner may, after consultation with the Committee, remove a member from the Committee whenever the Commissioner concludes, in the reasonable exercise of his or her discretion, that service by that member is no longer appropriate. Grounds for removal shall include, but not be limited to, the fact that such member

(i) no longer resides or works in New York City or

(ii) has incurred three or more unexcused absences from regularly scheduled monthly meetings of the Committee in any one year period beginning September 1.

(c) **Meetings.** The Committee shall meet during the first week of each month except July and August and at such other times as may be scheduled by the Department. A record shall be kept of each regularly scheduled meeting and shall include, among other matters, a listing of each applicant whose application is considered at such meeting and the recommendation or other action taken with regard to such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

3 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-03 Artist's Certification Coordinator.

The Commissioner shall appoint an Artist's Certification Coordinator (the "Coordinator") who shall be a member of the staff of the Department and who shall be responsible for the administration of the artist's certification procedure. Among other matters, the Coordinator shall review applications, maintain files pertaining to artist's certification, answer inquiries from the public, schedule meetings of the Committee, and prepare the agenda for and the record of each such meeting.

HISTORICAL NOTE

Section in original publication July 1, 1991.

4 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-04 Application Procedures.

(a) **Submission of application.** An application form for artist's certification may be picked up or requested by mail from the Department's offices located at 2 Columbus Circle, New York, New York 10019. The completed application shall be returned to the Department, together with the required documentation, addressed to the attention of the Artist's Certification Coordinator. The Coordinator shall then review such application for completeness. With regard to any application which is considered to be incomplete, the Coordinator shall attempt to contact and advise the applicant as to what additional material should be submitted. The applicant may then either submit additional material or request that the application be considered as originally submitted, in which case the Coordinator shall bring such application before the Committee pursuant to §1-04(c).

(b) **Required elements.** (1) **Basic information.** To be complete, an application for artist's certification must ordinarily include the following:

(i) A description of the applicant's art form or art occupation.

(ii) An explanation as to

(A) why occupancy of a joint living-work quarters for artists is important to the applicant in carrying out his or her art form or art occupation,

(B) how such space is or will be used for such purpose, and

(C) if the applicant currently lives and works in the same space, a diagram and/or photographs of such space.

(iii) A professional resume indicating, with reference to the applicant's particular art form or art occupation, professional experience (or a combination of professional training and experience) sufficient to demonstrate a serious, consistent commitment to such art form or occupation-such resume shall also include other information as to the applicant's educational background and professional training and the public dissemination of his or her work, e.g., exhibitions, performances, publications and the like, all such information to include relevant dates.

(iv) Documentation appropriate to the applicant's field evidencing his or her work and its dissemination to the public, e.g.,

Visual Artists-15 to 20 slides and/or photographs of work Set and Costume Designers-photographs of work Choreographers-photographs and/or video tapes or films of work, notated dance scores Composers-scores, tapes and/or recordings of compositions Filmmakers and Video Artists-films and/or videotapes Writers-samples of published work such as books, magazines, anthologies, broadsides, audio- and/or video or phonograph recordings of readings and performances All applicants-documentation of performances, publications, readings or showing of work to public such as programs, films, announcements or reviews.

(v) Additional material which demonstrates outside recognition of his or her standing as a professional in his or her art form or art occupation, e.g., reviews, written proof of grants, awards or fellowships, or relevant union or guild memberships.

(vi) The names, addresses and telephone numbers of two people recognized in the applicant's field who may be contacted as to the applicant's professional involvement as an artist.

(2) **Supplemental data.** In addition to the material referred to in §1-04(b)(1), the applicant may submit such other information as the applicant believes may support his or her request for artist's certification. The applicant may also be asked to submit further material relevant to his or her art form or art occupation in the event that:

(i) the Coordinator determines that the application is incomplete or

(ii) the Committee believes that it needs such additional material in order to make its recommendation. In such instances and in the case of an application being reconsidered pursuant to §1-06(a), the applicant may request that a studio visit be made to his or her studio or work place. Provided such space is located in New York City, the Coordinator, accompanied by another member of the Committee, shall use best efforts to comply with such request.

(c) **Review of application.** (1) At each regularly scheduled meeting of the Committee, subject to Paragraph (2) of this subdivision, all those applications considered complete by the Coordinator shall be presented to the Committee for review. The Coordinator shall first separate the applications into different categories according to art form or occupation and shall then assign each category of applications to a two member panel of the Committee, at least one member of which, if possible, should be engaged in the same or a related art form or occupation. Each panel shall then review the applications in its category and shall recommend to the Coordinator the action to be taken by the Commissioner with regard to each such application. The Coordinator may, in his or her discretion, present any application to the full Committee for discussion.

(2) The Coordinator shall have the discretion not to assign a particular application for review by a panel in the event that, after consultation with the Committee, where feasible, the Coordinator determines that such application clearly demonstrates that the applicant is entitled to certification. The Coordinator shall present any such application to the Commissioner at such time as those applications reviewed by the Committee are presented to the Commissioner for action.

(3) In the event any panel should be of the opinion that a particular application is incomplete, the panel shall advise

the Coordinator of the information such panel believes is necessary to complete the application. Such applications shall be marked tabled and shall be presented to the Committee again at such time as the missing information is supplied or the applicant requests that the application be considered as originally submitted.

(4) Following each meeting, the Coordinator shall gather the recommendations from each panel and shall present the applications, the recommendations and other pertinent information to the Commissioner, together with a written statement in the case of each application as to the reasons for the recommendations made with regard to the application. At this time, the Coordinator shall also notify all individuals whose applications have been tabled and shall advise them of the additional information requested by the Committee.

(5) The Commissioner shall make the actual determination with regard to each application. After action by the Commissioner, the Coordinator shall issue artist's certification to those individuals whose applications have been granted and shall notify those individuals whose applications have been denied of the reasons for such denial, and of their right to reconsideration and appeal thereof.

(6) If a particular applicant for artist's certification demonstrates in his or her application that he or she works in a heavy or bulky medium, pursuant to §42-141(b)(ii) of the New York City Zoning Resolution, the certification form issued such applicant may, at the applicant's request, carry a notation to that effect.

(7) Following the determination by the Commissioner or the withdrawal of any application for artist's certification, the Coordinator shall return to the applicant the materials listed in §1-04(b)(l)(iv) submitted in support of such application provided that he or she has submitted a self-addressed, stamped envelope for the return of such materials. Alternatively, these materials may be picked up by the applicant at the offices of the Department during regular business hours. Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the relevant application may be disposed of at the discretion of the Coordinator, except that the Coordinator shall retain possession of materials submitted in support of an application being reconsidered or on appeal until such time as a determination is reached with regard to reconsideration or appeal.

(8) In the event that an applicant whose application has either been tabled or is being held for reconsideration has not submitted the additional material requested by the Coordinator within four months after the date on which such application was either tabled or initially denied, the Coordinator may in his or her discretion consider such application withdrawn. In such instance, the Coordinator may dispose of supporting materials in accordance with §1-04(c)(7).

HISTORICAL NOTE

Section in original publication July 1, 1991.

5 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-05 Criteria for Granting Artist's Certification.

(a) **Statutory basis.** In determining whether to grant an application for artist's certification, the Department shall follow those criteria contained in the definition of an "artist" set forth in Section 276 of Article 7B of the New York State Multiple Dwelling Law, namely that those granted artist's certification be "regularly engaged in the fine arts . . . on a professional basis." Specifically, each applicant granted artist's certification must demonstrate that he or she meets the following criteria:

(1) **Regularly engaged.** The applicant is currently engaged in and demonstrates a serious consistent commitment to his or her art form or art occupation.

(2) **Fine arts.** The applicant is engaged in an art form or art occupation which

(i) can be considered and

(ii) is pursued by the applicant as a "fine art".

To demonstrate pursuit of such art form or occupation as a fine art, the application should evidence a substantial element of independent esthetic judgment and self-directed work by the applicant in pursuing such art form or occupation, i.e., the production of work solely on a commercial, industrial or work-for-hire basis without evidence of the foregoing elements is not sufficient to demonstrate pursuit of a particular art form or occupation as a fine art.

(3) **Professional basis.** The application should warrant a finding that the applicant is committed to the art form or

occupation as his or her primary vocation and that others in the field recognize the applicant as a professional with regard to his or her art form or occupation. The word "professional" in this context does not necessarily refer to the amount of financial renumeration earned therefrom.

(b) **Intent to use joint living-work quarters.** Consistent with the designation of zoning districts M1-5A and M1-5B as manufacturing districts pursuant to the New York City Zoning Resolution, to obtain artist's certification, an applicant must demonstrate an intent to use joint living-work quarters for the purpose of carrying out his or her art form or occupation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

6 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-06 Right to Reconsideration or Appeal.

(a) **Reconsideration.** (1) In the event an applicant is denied artist's certification by the Commissioner, the applicant shall have the opportunity either to

(i) withdraw the application,

(ii) request that it be reconsidered, in which case the applicant shall submit additional material in support of the application, or

(iii) request an immediate appeal of the Commissioner's denial of certification. If within 30 days of the date notice of such denial is given, the Artist's Certification Coordinator has not been notified that the applicant requests either reconsideration or appeal, then the application shall be considered withdrawn. An applicant denied certification whose application has been withdrawn after the initial determination by the Commissioner may submit a new application for certification at any time.

(2) Should an applicant who has been denied certification request reconsideration of his or her application, after the Artist's Certification Coordinator determines that all relevant additional information has been submitted, such application shall be presented to the Committee for reconsideration at the next regularly scheduled meeting. Reconsideration of an application shall be governed by the same procedures set forth herein as to the initial submission of an application.

(b) **Appeal.** (1) In the event that an application is reconsidered and again denied, or the applicant elects not to

submit additional information and have his or her application reconsidered by the Committee, the applicant may take an appeal to the Appeals Board. Upon receipt of a request for an appeal, the Coordinator shall schedule a special meeting of the Appeals Board to consider the appeal. At the meeting, the Coordinator shall present the application, following which the Coordinator shall seek the opinion of each Appeals Board member as to whether the appeal should be granted and the reasons for such opinion. The Coordinator shall then forward a statement of these opinions to the Commissioner who shall then determine whether the appeal should be granted. Following the Commissioner's decision with regard to the appeal, the applicant shall be promptly notified of such decision. In the event the Commissioner determines that the appeal should be granted, the Coordinator shall issue an artist's certification to the applicant.

(2) In the event that the Commissioner determines that the appeal should be denied, then the applicant may submit a new application for artist's certification after a period of one year has elapsed from the date of such determination.

(3) Following determination of the appeal, the Coordinator shall return the materials submitted in support of the application to the applicant in accordance with the procedures set forth in §1-04(c)(7). Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the appeal may be disposed of at the discretion of the Coordinator.

(4) The decision of the Commissioner with reference to a particular appeal shall be considered to be the final determination of the relevant application for purposes of Article 78 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

7 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-07 Effect of Artist's Certification.

(a) **Validity.** (1) Artist's certification shall be valid for so long as the artist so certified resides at the address contained on the certification form. An artist granted artist's certification may apply to the Department for a change in the address indicated on the certification form provided that

(i) such artist returns his or her original certification form and submits adequate proof, such as a signed lease, that he or she now resides at the new address, and

(ii) no more than one year has elapsed since the date certification was granted. The Department will then issue a new certification form containing the new address.

(2) The Department will not accept a request for a change in the address contained on a certification form in the event that such request is made more than one year after the date of such certification. In such instances, the person previously certified shall submit a new application for artist's certification, but unless otherwise requested by the Coordinator, such applicant need only submit information and supporting documentation relevant to that period of time which has elapsed since the date of his or her previous certification. Applications for re-certification shall be governed by the same procedures as set forth herein for the review of initial applications.

(b) **Legal significance.** The legal significance of a certification form issued by the Department is to evidence that the person named therein meets the legislative criteria regarding artist's certification and is therefore eligible to live in joint living-work quarters, in an area and dwelling unit where such use is permitted by law pursuant to the terms of the city's Zoning Resolution and New York State Multiple Dwelling Law. Artist's certification does not represent a

determination by the Department that joint living-work quarters in a particular building is lawful under the Zoning Resolution or any other applicable law or regulation, nor that such space meets the relevant specifications of the Buildings Department Code.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

58 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-08 Nontransferability.

Each artist's certification form is valid only for the person named therein and may not be transferred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

9 of 9 DOCUMENTS

Rules of the City of New York

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

58 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 58 Department of Cultural Affairs

CHAPTER 1 JOINT LIVING-WORK QUARTERS FOR ARTISTS

§1-09 Submission of False or Fraudulent Information.

The submission of any information in connection with an application for artist's certification which the applicant knows to be false will result in the denial of the application or the revocation of any artist's certification based on such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

1 of 3 DOCUMENTS

Rules of the City of New York

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

60 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 1 ADJUDICATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§1-01 Adjudication of Fitness and Discipline of Commission Employees.

New York City Civil Service Commission adjudications regarding the fitness and discipline of Commission employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 17, 1991 eff. May 17, 1991.

2 of 3 DOCUMENTS

Rules of the City of New York

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

60 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 2 DETERMINATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§2-01 Appeals from Disciplinary Determinations.

(a) Any person entitled under §76 of the Civil Service Law to take an appeal from a finding of guilt and/or a penalty of punishment in a disciplinary proceeding conducted pursuant to §75 of the Civil Service Law, shall duly make such appeal by sending by ordinary, registered or certified mail or by delivering personally, a written notice of appeal to the Commission and by sending a copy thereof by the same means to appellant's employer agency. All notices of appeal shall be mailed or delivered within twenty (20) days after the date of service of a written notice of the determination to be reviewed. Such additional time in which to appeal as provided in CSL Sec. 76 shall be allowed where service of the determinations was by mail. The agency head concerned (or his/her designee) shall transmit to the Commission within ninety (90) days after receipt of the notice of appeal the entire record of the disciplinary proceeding including the written transcript of the hearing. Proof of service of the notice of determination to be reviewed shall be submitted where the agency moves to dismiss the notice of appeal as untimely. Motions for dismissal on jurisdictional grounds may be made prior to submission of the record below.

(b) Where a hearing officer other than the agency head is designated in writing to hear the charges preferred, the record furnished the Commission shall contain such written designation of a copy thereof unless such designation is on file with the Commission or provided for in the City Charter and/or published agency rules.

(c) Where an appeal is taken, the Commission shall review the record below and shall afford appellant and the employing agency the opportunity to make an oral presentation and/or to submit written statements to the Commission. Oral arguments may be heard by one or more members of the Commission, or any person duly designated pursuant to §76(2) of the Civil Service Law. When an appellant declines to make an oral argument, the appeal shall be deemed submitted to the Commission. The agency may elect to reset on the record adduced at the disciplinary proceeding.

(d) Oral argument shall be scheduled within ninety (90) days of receipt of the record below or as soon thereafter as practicable. The determination of the Commission shall be rendered within ninety (90) days after the record on appeal has been submitted for decision or as soon thereafter as practicable.

(e) When the Commission reviews determinations regarding the fitness and discipline of agency employees after hearings conducted pursuant to Civil Service Law §75, the Commission may affirm, reverse or modify the findings of fact, conclusions of law and penalties imposed below.

(f) Where the Commission upon appeal modifies a determination of dismissal by permitting or requiring the transfer of an appellant to a vacancy in a similar position in another division or department;

(1) the appellant shall be transferred to another division of department provided the head of such division or department consents thereto;

(2) such transferee, prior to the approval of such transfer, shall execute all appropriate documents to record his transfer, including, if required by the Commission, a waiver of back pay and civil service rights and status during the period of dismissal;

(3) such transferee shall be required to service the same probationary term as required for original appointments.

HISTORICAL NOTE

Section in original publication July 1, 1991.

3 of 3 DOCUMENTS

Rules of the City of New York

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

60 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 60 Civil Service Commission

CHAPTER 2 DETERMINATIONS OF THE NEW YORK CITY CIVIL SERVICE COMMISSION

§2-02 Appeals from Determinations of the City Personnel Director.

(a) An appeal to the Commission by any person aggrieved by an action or determination by the City Personnel Director or his or her designee on accordance with his or her powers as specified in §2-02(b) herein, shall be made by application in writing to the Commission within thirty (30) days of the date of the action or determination appealed from. Such action or determination shall be deemed to be effective upon notice to the appellant. If notice of the action or determination is by mail, there shall be a rebuttable presumption that notice occurred as of five calendar days after the date of the mailing of the action or determination.

(b) An appeal to the Commission shall lie only where the action or determination appealed from is made pursuant to the City Personnel Director's powers and duties as enumerated in paragraphs 3, 4, 5, 6, 7, and 8 of §813(a) of the City Charter and paragraph 5 of §813(b) of the City Charter.

(c) The Commission may affirm, modify, reverse or remand such action or deter- mination.

(d) The Commission shall decide appeals from determinations of the City Personnel Director or his or her designee on the basis of written submissions by the parties. Such submissions shall include the record support in the determination of the City Personnel Director or appropriate motions to dismiss the notice of appeal. The Commission, however, may hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the City Personnel Director. At such proceedings, the City Personnel Director will be permitted to defend his/her action or determination.

(e) The appellant shall be entitled to a transcript of the Commission's proceedings upon payment of a reasonable

cost for the production of same.

(f) All appeals to the Commission which result from medical disqualifications by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(g) All appeals to the Commission which result from a psychological disqualification by the City Personnel Director and/or his or her designee pursuant to §813(6) of the City Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(h) Extension of the time periods set forth in §§2-02(f) and 2-02(g) may be granted for good cause shown.

(i) When the Commission deems that oral argument is required as set forth in §2-02(d), such proceeding shall be scheduled within ninety (90) days of receipt of the complete record or as soon thereafter as practicable.

(j) The Commission shall in all appeals from actions or determinations of the City Personnel Director render a written determination within ninety (90) days of the date such appeal is reveiwed or as soon thereafter as practicable.

(k) The Commission may, in its discretion, take whatever measures it deems appropriate to ensure review of pending appeals prior to the expiration of the pertinent eligible list.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

61 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-01 Definitions.

Terms defined in the statute. The terms "Director," "Board of Collective Bargaining," "Board of Certification," "municipal agency," "municipal employees," "mayoral agency," "public employer," "public employees," "municipal employee organization," "public employee organization," "Municipal Labor Committee," "certified employee organization," "matters within the scope of collective bargaining," "executive order," "grievance," "labor member," "city member," "impartial member," "designated representative," and "designated employee organization" shall have the meanings set forth in §12-303 of the statute.

Deputy Director. The term "Deputy Director" shall mean a deputy appointed by the Director pursuant to §1170 of the New York City Charter.

Director of Representation. The term "Director of Representation" shall mean the person appointed by the Director to administer and oversee the processing of all representation cases and all other duties as assigned by the Director.

Executive Secretary. The term "Executive Secretary" shall mean the person appointed by the Director to carry out the responsibilities defined by §1-07(c)(2) of these rules.

Improper practices. The term "improper practices" shall have the meaning set forth in §12-306 of the statute; the term "improper practices proceeding" shall mean a proceeding conducted, pursuant to §12-309(a)(4) of the statute, to investigate and determine charges of improper practices and, when appropriate, to issue orders for the purpose of remedying such improper practices.

Representation proceeding. The term "representation proceeding" shall mean a proceeding under §12-309(b) of the statute to investigate and determine a question or controversy concerning the representation of public employees for the purposes of collective bargaining.

Rules. These rules shall be cited as the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1).

Statute. The term "statute" shall mean the New York City Collective Bargaining Law, Chapter 3 of Title 12 of the Administrative Code of the City of New York, as amended.

Trial examiner. The term "trial examiner" shall mean any authorized person conducting a hearing and may include a member of either Board, a Deputy Director, or any other agent designated by the Director to conduct a hearing.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

61 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-02 Representation Proceedings.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Certification.

(b) **Petition-filing.** A petition for the investigation of a question or controversy concerning the representation of public employees may be filed by a public employer, public employees, or their representatives. The petition shall be filed on a form prescribed by the Office of Collective Bargaining and shall be in writing and signed. The original and three copies thereof shall be filed with the Board.

(c) **Petition by public employees or their representatives-contents; proof of interest.**

(1) A petition filed by public employees or their representatives shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) The name, address, telephone and fax numbers of the public employer;

(iii) The classes of titles of employees in the units claimed to be appropriate and the approximate number of employees therein;

(iv) An allegation that a question or controversy exists concerning representation and a concise statement of the nature thereof;

(v) The names, addresses, telephone and fax numbers of any other public employee organizations, known to

petitioner, which claim to represent employees in the alleged appropriate bargaining units, and the expiration date of any existing collective bargaining agreement;

(vi) A request that the Board certify or designate the petitioner as the exclusive bargaining representative of the employees in the appropriate units or for other appropriate action.

(2) Simultaneously with the filing of the petition petitioner shall:

(i) In the case of a petition for certification, submit to the Board evidence that at least 30 percent of the employees in the appropriate unit, or in each appropriate unit, desire petitioner to represent them for the purposes of collective bargaining;

(ii) In the case of a petition for designation as the collective bargaining representative of a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, submit evidence that it is the certified representative of a bargaining unit which includes more than 50 percent of the employees in the unit for which designation is sought.

(3) If such evidence is not timely submitted, the Board may dismiss the petition forthwith. Sufficiency of interest shall not be litigated.

(d) **Petition by public employer-contents.** The petition shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) A general description of petitioner's function and the number of its employees;

(3) The classes of titles of employees in the units claimed to be appropriate and the approximate number of employees therein;

(4) An allegation that a question or controversy exists concerning representation and a concise statement setting forth the nature thereof, and, in any case when a public employer entertains a good faith doubt concerning the continued majority status of a certified union, an allegation to that effect with a concise statement of the facts upon which the doubt is based;

(5) The names, addresses, telephone and fax numbers of the public employee organizations which claim to represent the employees in the alleged unit(s);

(6) A request that the Board investigate the alleged question or controversy.

(e) **Decertification petition-contents; proof of interest.**

(1) A petition alleging that a certified or designated employee organization is no longer the representative of the public employees in an appropriate bargaining unit may be filed by a public employee or group of public employees or their representative. The petition shall be in writing and signed and shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) The name, address, telephone and fax numbers of the certified or designated employee organization;

(iii) A description of the bargaining unit(s) involved and the number of employees therein;

(iv) The expiration date of any contract covering employees in the unit(s);

(v) An allegation that the certified or designated employee organization no longer is the representative of the

employees in the appropriate unit(s), and any other relevant and material facts.

(2) (i) Simultaneously with the filing of a decertification petition, the petitioner shall submit to the Board evidence that at least 30 percent of the employees in each unit do not desire to be represented by the certified employee organization;

(ii) Simultaneously with the filing of a petition for revocation of a designation as collective bargaining representative of a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, the petitioner shall submit to the Board evidence that the designated representative is not the certified representative of the bargaining unit or units which include more than 50 percent of the employees in the unit which it has been designated to represent;

(iii) If such evidence is not timely submitted, the Board may dismiss the petition forthwith. Sufficiency of interest shall not be litigated.

(f) **Proof of interest-current.** Designation and authorization cards and petitions, submitted as proof of interest under §§1-02(c)(2), 1-02(e)(2) or 1-02(1) of these rules, must be dated and signed by the employees not more than seven months prior to the commencement of the proceeding before the Board. Proof of interest shall be based on the payroll immediately preceding the date of filing of the petition, unless the Board deems such period to be unrepresentative.

(g) **Petitions-contract bar; time to file.** A valid contract between a public employer and a public employee organization will bar the processing of any petition filed outside of the window periods described below. The time period for filing a petition for certification, designation, decertification or revocation of designation pursuant to §1-02(c), (d), or (e) of these rules shall be: for a contract of no more than three years' duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract's expiration date; for a contract of more than three years' duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract's expiration date, or not less than 150 or more than 180 calendar days before the end of the third year of that contract. No petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract. However, in the event that a public employer and a public employee organization sign a successor contract after that contract has expired, then a petition for certification, decertification or question or controversy concerning representation may be filed in the 30-day period following the date the successor contract is signed by all parties. Moreover, if the Board finds that unusual or extraordinary circumstances exist, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may process a petition otherwise barred by this rule.

(h) **Petitions-notice of filing.** Upon the filing of a petition pursuant to the provisions of §1-02 of these rules, notice thereof shall be posted on the public docket maintained by the Board and shall be published in the City Record. The notice shall include the date the petition was filed, the name and address of the petitioner, the name and address of the public employer, and a statement of the action sought. A notice containing the same information will be prepared by the Board and delivered to the employer, which shall post it on the bulletin board customarily used for the posting of notices for employees for a minimum of ten business days.

(i) **Responses-time to file.** For petitions filed pursuant to §1-02(c), (d), or (e) of these rules the public employer or an employee organization certified to represent the existing bargaining unit shall file with the Director within 30 business days after service of the notice of filing of a petition pursuant to §1-02 of these rules, an original and three copies of its written submission, with proof of service upon all other parties, setting forth its position on the petition. As circumstances require, the request of the public employer or employee organization for an extension of time to file its written submission, on notice to all parties, shall not be unreasonably denied. When it is the public employer's position that any of the petitioned-for titles and employees are managerial or confidential, in its written submission the employer

shall comply with the requirements of §1-02(v) of these rules insofar as they require a statement of the factual basis of the allegation that the affected titles and employees are managerial or confidential, as the case may be. In the absence of any response from the public employer or an employee organization certified to represent the existing bargaining unit within the time specified above, the Board shall proceed with processing the petition. For petitions filed pursuant to §1-02(c) and (e) of these rules, responses filed by an employer must contain an alphabetized list of all the employees in the unit(s) sought.

(j) **Investigation.** (1) In its investigation of a question or controversy concerning representation, the Board may conduct informal conferences or hearings, may direct an election or elections, or use any other suitable method to resolve the question concerning representation.

(2) If, after a petition or motion has been filed pursuant to section §1-02 of these rules and at any time prior to the close of the record, it appears to the Director of Representation that no further proceedings are warranted because the petition or motion does not raise a question concerning representation or is otherwise insufficient due to untimeliness, contract or certification bar or lack of a sufficient showing of interest, the Director of Representation may dismiss the petition or deny the motion by administrative action, and will so advise the parties in writing, setting forth the grounds for dismissal. Within 10 business days after service of a letter dismissing a motion or petition, the petitioner may obtain review of the dismissal by filing with the Board an original and three copies of a statement in writing setting forth the reasons for the appeal together with proof of service thereof upon all other parties.

(k) **Appropriate units-determination.** In determining appropriate bargaining units, the Board will consider, among other factors:

(1) Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;

(2) The community of interest of the employees;

(3) The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;

(4) The effect of the unit on the efficient operation of the public service and sound labor relations;

(5) Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;

(6) Whether the unit is consistent with the decisions and policies of the Board.

(l) **Determination of representatives on consent.** Subject to the approval of the Director of Representation, the parties to a representation proceeding may waive a hearing and agree in writing on the method by which the Board shall determine the question of representation.

(m) **Voluntary recognition-notification.** (1) **Filing of notification.** When the public employer proposes voluntarily to recognize a public employee organization for the representation of public employees pursuant to §12-303(l)(2) of the statute, the employer shall file an original and three copies of a signed written notification with the Board.

(2) **Notification of proposed recognition by public employer-contents.** The notification shall contain:

(i) The name, address, telephone and fax numbers of the public employer;

(ii) A general description of the public employer's function and the number of its employees;

(iii) The classes of titles of employees in the units which have been recognized and the approximate number of employees therein;

(iv) A statement that no question or controversy is known to exist concerning representation thereof;

(v) The names, addresses, telephone and fax numbers of the public employee organization(s) which has (have) been recognized to represent the employees in the units;

(vi) A request that the certification held by the public employee organization(s) be amended, if applicable, to reflect the voluntary recognition.

(3) **Notification of proposed recognition-notice of filing.** Upon the filing of a notification of proposed recognition pursuant to the provisions of §1-02 of these rules, notice thereof shall be posted on the public docket maintained by the Board and shall be published in the City Record. The notice shall include the date the notification of recognition was filed, the name and address of the public employer, the name and address of the public employee organization, and a statement of the action sought. A notice containing the same information will be prepared by the Board and delivered to the employer, which shall post it on bulletin boards customarily used for the posting of notices for employees for a minimum of 10 business days. Within 21 calendar days of service of the notice, the public employer shall provide the Board with a signed certification that the notice has been posted.

(4) **Objection to proposed recognition.** An employee, a group of employees, or a public employee organization may file a statement with the Board objecting to the proposed recognition and alleging that a question or controversy exists regarding representation. Such a statement of objection, if filed in a timely manner within the period of objection, will preclude a proposed recognition from becoming effective. In the event an objection is timely filed, the notice of voluntary recognition will be deemed a petition pursuant to §1-02(d) of these rules and will be processed accordingly.

(5) **Period of objection.** A public employee or employee organization objecting to the recognition shall file an original and three copies of its statement of objection, with proof of service on the public employer and public employee organization, setting forth the basis for its opposition within 20 calendar days of publication of the notice of filing in the City Record.

(n) **Elections-participation; eligibility.** (1) If the Board determines, as part of its investigation, to conduct an election, it shall determine who may participate in the election and appear on the ballot, the form of the ballot, the employees eligible to vote in the election, and the rules governing the election. An intervening public employee organization, other than a certified public employee organization, shall not be entitled to appear on the ballot except upon a showing of interest, satisfactory to the Board, of at least 10 percent of the employees in the unit found to be appropriate.

(2) When a public employer objects to the addition of supervisory or professional employees to a unit which contains non-supervisory employees or non-professional employees pursuant to §12-309(b)(1) of the statute, an election shall be held to determine whether a majority of supervisory or professional employees voting in an election are in favor of such a unit. The electorate of such an election shall consist solely of such supervisory or professional employees sought to be added to such a unit. When there is a dispute as to the eligibility of the employees in question or the appropriateness of the proposed unit, those issues shall be resolved by the Board prior to the holding of an election under this subdivision.

(3) No election shall be conducted in any bargaining unit or any subdivision thereof within which, in the preceding 12-month period, a valid election shall have been held except upon the consent of the parties.

(o) **Elections-notice.** Prior to the election, the Board will prepare a notice of election which will specify the time and place of the election, the hours the polls will be open, the classes of titles of employees in the appropriate unit in which the election is to be conducted, rules concerning eligibility to vote, the form and content of the ballot, and such

additional information and instructions as the Board may determine. Copies of the notice will be delivered to the public employer, who shall post them on the employees' bulletin boards and in other appropriate places, until the election has been concluded.

(p) **Elections.** (1) **Conduct.** All elections shall be by secret ballot and shall be conducted under the supervision of an agent of the Board at such time and place as the agent may direct.

(2) **Observers.** Each party may be represented by observers selected in accordance with such limitations and conditions as the Board may prescribe.

(3) **Challenges.** An observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending Board decision thereon.

(4) **Count of ballots.** After the polls have been closed, the ballots shall be counted by the Board's agent in the presence of the observers.

(5) **Report of count.** Upon the conclusion of the election, the Board or its agent shall prepare and serve upon the parties a report showing the results of the election.

(q) **Inconclusive elections; run-off.** In any election in which three or more choices (including "no representative") appear on the ballot, if no choice receives a majority of the valid ballots cast, and the valid ballots cast for "no representative" total less than 50 percent of the valid ballots cast, the Board may conduct a run-off election in which only the two public employee organizations which received the largest number of valid votes shall appear on the ballot, and the choice of "no representative" shall be omitted therefrom.

(r) **Post-election procedure-objections; challenges.** Within seven business days after service of the report of count, any party may serve on all other parties and file with the Board (with proof of service) an original and three copies of objections to the election, to conduct affecting the results of the election, or to the report of count. The objections shall be verified, and shall contain a concise statement of the facts constituting the grounds of objections. The Board may direct oral argument before it, or direct a hearing, or otherwise investigate and make its determination with respect to the objections or any challenged ballots.

(s) **Certification-determination of majority; no strike affirmation; disqualification.** (1) Upon completion of its investigation of any petition or motion filed pursuant to §1-02 of these rules, the Board shall certify to the parties the name of the representative, if any, which has been designated as their representative by a majority of the employees in the appropriate bargaining unit, or, if an election is held, which has been selected by the majority of the employees casting valid ballots in the election, or make other disposition of the matter. Notice of certifications issued by the Board shall be published in the City Record.

(2) No public employee organization shall be certified as an exclusive bargaining representative unless it has filed with the Board a no-strike affirmation as required by the New York State Public Employees Fair Employment Act.

(3) An employee organization shall not be eligible for certification as an exclusive bargaining representative if it:

(i) discriminates with regard to the terms and conditions of membership because of race, color, creed, sex or national origin, or

(ii) engages in or advocates the violent overthrow of the government of the United States or any state or any political subdivision thereof.

(t) **Certification; designation-life; modification.** When a representative has been certified by the Board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to

appear to the Board, through a secret ballot election conducted in a proceeding under §§1-02(c), (d), or (e) of these rules, that the certified employee organization no longer represents a majority of the employees in the appropriate unit. When a representative has been designated by the Board to represent a unit for the purposes specified in paragraphs two, three or five of §12-307(a) of the statute, such designation shall remain in effect for one year from the date thereof and until such time as it shall be made to appear to the Board that the designated employee organization no longer represents a majority of the employees in the appropriate unit. Notwithstanding the above bar on challenging a certification within one year of its issuance, in any case when unusual or extraordinary circumstances require, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may modify or suspend, or may shorten or extend the life of the certification or designation.

(u) **Amendments of certifications-motion; affidavit; notice of filing; answering affidavit; disposition by the Board.** (1) A public employer or the certified bargaining representative of a unit may make a motion requesting amendment of a certification to include classes of titles (positions), the names of which are changed, or new specialty designations, or a new class of titles (positions), and/or to delete obsolete titles (positions) or designations. The motion shall be in writing and supported by the affidavit of an officer of or attorney for the moving party. The original and three copies thereof shall be filed with the Board together with proof of service on any other parties.

(2) A motion for amendment of certification pursuant to this subdivision shall be based upon an affidavit which shall contain:

(i) The name, address, telephone number and fax numbers of the certified bargaining representative of the unit(s) involved;

(ii) A description of the bargaining unit(s) involved and the date of certification of the bargaining representative;

(iii) All names of the classes of titles (positions) and designations involved and the date(s) on which any change of name or creation of new name or designation was effected;

(iv) A request that the bargaining representative's certification be amended to reflect the changes recited in the petition.

(3) Upon the filing of a motion pursuant to this subdivision, notice thereof shall be posted on the public docket maintained for such motions by the Board and shall be published in the City Record. The notice shall include the date the motion was filed, the names and addresses of the parties and the changes covered by the motion. A notice containing the same information shall be prepared by the Board and delivered to the employer, which shall post it on the bulletin board customarily used for the posting of notices for employees for a minimum of 10 business days. Within 21 calendar days of service of the notice, the public employer shall provide the Board with a signed certification that the notice has been posted.

(4) A public employer or employee organization opposing the motion shall file an original and three copies of its answering affidavit, with proof of service on the other parties, setting forth the basis for its opposition within 10 business days of publication of the notice of filing in the City Record.

(5) In the absence of answering affidavits filed by a public employer or employee organization opposing the motion or in the absence of defects revealed by the Board's investigation, the Board shall issue the amendment forthwith.

(6) When a motion filed under this subdivision is contested, the Board may conduct informal conferences or hearings, may direct an election or elections, or use any other suitable method to resolve the question concerning representation.

(v) **Petition for designation of persons as managerial or confidential employees-contents; time to file; notice; intervention; investigation; determination.**

(1) A petition for the designation of certain of its employees as managerial or confidential may be filed by a public employer or its representative. The petition shall be in writing and signed. The original and three copies thereof shall be filed with the Board together with proof of service on any other parties. The petition shall contain:

(i) The name, address, telephone and fax numbers of petitioner;

(ii) A general description of petitioner's function;

(iii) The titles of employees covered by the petition and the number of employees in each;

(iv) A statement as to whether any of the titles affected by the petition has ever been included in a collective bargaining unit for purposes of negotiation with petitioner; whether any of them has been represented at any time by a certified employee organization; and the current collective bargaining status of each such title;

(v) The expiration date of any current collective bargaining agreement covering employees affected by the petition;

(vi) A statement that the titles and employees affected by the petition be designated either managerial, confidential, or both, as the case may be;

(vii) A statement of the basis of the allegation that the titles and employees affected by the petition are managerial and/or confidential;

(viii) The name, address, telephone and fax numbers of any certified employee organization which represents persons affected by the petition;

(ix) A statement that notice of the filing of the petition has been mailed to any certified employee organization which represents employees in such titles.

(2) A petition for the designation of employees as managerial or confidential may be filed:

(i) Not less than five or more than six months before the expiration date of the contract covering the employees sought to be designated managerial or confidential; or

(ii) During the pendency of a representation proceeding in which the petitioned for unit includes the employees sought to be designated managerial or confidential; or

(iii) In the discretion of the Board when unusual circumstances are involved.

(3) Any employee affected by the petition may apply to the Board for permission to intervene in the proceeding following the general procedures prescribed in §1-12(k) of these rules within 20 calendar days of publication of the notice prescribed in §1-02(h) of these rules. Such application shall be made by a motion addressed to the Board and supported by an affidavit stating the basis for the request for permission to intervene, including a statement as to whether intervenor appears in support of or in opposition to the petition and a recital of the facts upon which intervenor bases such support or opposition.

(4) In its investigation of a question as to the managerial or confidential status of employees, the Board may conduct informal conferences or hearings or use any other suitable method of resolving the matter.

(5) Upon completion of its investigation, the Board shall determine whether or not the titles affected by the petition or any of the persons employed in any such title are managerial or confidential and shall communicate its determination

to the parties. Notice of such determination shall also be published in the City Record.

(6) A determination by the Board made pursuant to this subdivision regarding the managerial or confidential status of a title shall be final and binding and, subject to §1-02(v)(2)(iii) of these rules, such determination shall preclude a petition to represent the title and employees or a petition to designate the title and employees managerial or confidential for a period of two years or until the period specified in §1-02(v)(2)(i) above, whichever is later. A petition filed pursuant to this subdivision shall include a statement of facts demonstrating such a material change in circumstances subsequent to the Board's prior determination as to warrant reconsideration of the managerial or confidential status of the title or employee.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (e) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (g) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (i) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (j) relettered (formerly (i)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (k) relettered (formerly (j)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (l) relettered (formerly (k)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (m) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) relettered (formerly (l)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (n) par (3) renumbered (formerly (2)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (o) relettered (formerly (m)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (p) relettered (formerly (n)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (q) relettered (formerly (o)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (r) relettered (formerly (p)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (s) relettered (formerly (q)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (t) relettered (formerly (r)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) relettered (formerly (s)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) par (2) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (u) par (5) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (v) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1] This subd. (v) repealed in 12/3/03 amendment (w) relettered to be (v).

Subd. (w) relettered (formerly (t)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

Subd. (w) par (1) subpar (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 6, 1997:

The Board of Collective Bargaining and the Board of Certification of the New York City Office of Collective Bargaining are authorized to adopt rules and regulations for the conduct of their business and the carrying out of powers and duties conferred upon them by law, pursuant to Section 12-309(a)(7) and Section 12-309(b)(5) of the New York City Administrative Code. The purpose of these amendments is, generally, to update and/or revise previously adopted rules of procedure and, specifically, to bring existing rules into conformity with the current state of applicable federal and State law, to clarify existing rules, or to set forth new procedures.

The proposed rule amendments are the work-product of the Tripartite Committee to Revise the New York City Collective Bargaining Law and Rules of the Office of Collective Bargaining. Membership in the Tripartite Committee was open to all of the municipal unions as well as the City and related public employers. Representatives of several unions, the Mayor's Office of Labor Relations, the Health and Hospitals Corporation, and staff of the Office of Collective Bargaining participated. The proposed rule amendments represent only those changes which have the unanimous support of the Tripartite Committee.

GENERAL CHANGES

The following rule amendments reflect recent advances in law office technology:

Sections 1-02(c), 1-02(e), 1-02(u)(2)(i), 1-02(w)(3)(i), 1-03(b)(1), 1-07(e)(1), 1-13(c)(1).

The following rule amendments achieve gender neutrality in language:

Sections 1-04(b), 1-05(e), 1-05(l)(3), 1-05(n), 1-07(i), 1-10(c), 1-10(g), 1-10(h), 1-10(k), 1-11(a), 1-13(f).

The following rule amendments correct grammatical or typographical errors:

Sections 1-02(u)(5), 1-14(c).

The following rule amendments clarify that, in the following sections, the reference to days is to "business" days rather than to "calendar" days:

Sections 1-06(e), 1-07(h), 1-07(i), 1-12(d)(1), 1-12(d)(2), 1-13(k).

The following rules are renumbered to accommodate the insertion of new sections:

Sections 1-02(j)-(l), 1-02(n)(1), 1-02(n)(3), 1-02(t), 1-02(u), 1-02(w), 1-05(g)-(n), 1-07(c)(1), 1-07(f)(1), 1-13(c)(3).

SUBSTANTIVE CHANGES

Section 1-02(g) provides that the period for filing a representation petition is a certain number of calendar days rather than months prior to the expiration date of the contract.

Section 1-02(i) provides that interested parties in a representation proceeding who wish to submit a written statement of position with respect to a petition must do so by a specified date.

Section 1-02(m)(1)-(5) sets forth the procedure to be followed when a public employer voluntarily recognizes a public employee organization pursuant to Section 12-303(1)(2) of the New York City Administrative Code.

Section 1-02(n)(2) sets forth the procedure for an election held in the event the employer objects to the certification or designation of a mixed unit of supervisory and non-supervisory or professional and non-professional employees pursuant to Section 12-309(b)(1) of the New York City Administrative Code.

Section 1-02(t) provides that the Board's authority to modify, suspend or shorten the life of a certification or designation in the event of unusual or extraordinary circumstances is limited to the first year of certification or designation; and further clarifies the situations that are contemplated by the phrase "unusual or extraordinary circumstances".

Section 1-02(v) sets forth the procedure for processing a motion to amend a certification to include a newly created title having identical or substantially the same job duties as a previously certified title when the motion is uncontested.

Section 1-03(b)(4) modifies the existing rule to require certain additional information be included in bargaining notices.

Section 1-05(g) sets forth the procedure for the filing and processing of a scope of collective bargaining petition during the pendency of an impasse proceeding.

Section 1-05(i) provides that in the selection of an impasse panel, a list containing no less than seven names is submitted to the parties; and further conforms the rule to existing law, wherein, pursuant to expiration of Section 5408(3) of the Unconsolidated Laws (New York State Financial Emergency Act for the City of New York), notice of the appointment of an impasse panel on the Financial Control Board is no longer required.

Section 1-06(e) allows the parties ten business days to agree upon an arbitrator; and further provides that when there is no agreement, a list containing no less than seven names is submitted to the parties.

Section 1-07(c)(2) cross-references the new procedure for filing a scope of collective bargaining petition during the pendency of an impasse proceeding.

Section 1-07(e)(3) requires more specificity in petitions filed pursuant to these rules.

Section 1-07(f)(2) conforms the rule to existing law, which provides for joinder of the employer in improper practice proceedings in which it is alleged that a union has breached its duty of fair representation pursuant to Article 14, Section 209-a(3) of the Civil Service Law.

Section 1-07(h) modifies the existing rule to require a respondent to file an answer to an improper practice petition within ten business days of service, rather than receipt, of the Executive Secretary's determination.

Section 1-11(d) clarifies that the Civil Practice Law and Rules will govern when the amount payable as witness

fees is in dispute.

Section 1-12(e) provides that the grant of a request for oral argument before the Board is discretionary.

Section 1-13(a) sets forth the procedure for correcting certain defective pleadings.

Section 1-13(c)(2) defines who must be served in order for service to be complete.

Section 1-13(e) adopts the period specified in the Civil Practice Law and Rules as it relates to the measurement of time when service is by mail.

Section 1-13(j) provides that a trial examiner has discretion to evaluate a motion made orally at the hearing and to direct that a motion be submitted, in writing, to the Board.

Section 1-13(k) allows for the filing of reply affidavits.

Section 1-14(b)(2) empowers trial examiners to deal with discovery issues arising in cases before them.

Section 1-15(b) conforms the rule to the New York City Charter as it relates to the City Administrative Procedure Act.

2. Statement of Basis and Purpose in City Record Dec. 3, 2003: The Board of Collective Bargaining and the Board of Certification of the New York City Office of Collective Bargaining are authorized to adopt rules and regulations for the conduct of their business and the carrying out of powers and duties conferred upon them by law, Section 12-309(a)(7) and Section 12-309(b)(5) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL"). The purpose of these amendments is, generally, to update and/or correct previously adopted rules and, specifically, to bring existing rules into conformity with the current state of applicable federal and State law, to codify existing practices within the agency, to clarify existing rules, or to set forth new procedures. General Changes Throughout the rules, the following terms were capitalized: "Board", "Director", "Deputy Director" and "City Record". Definitions for the following Board agents were added in Section 1-01: "Director of Representation" and "Executive Secretary". Section 1-01 was amended to provide the manner in which to cite the OCB's rules. Throughout the rules, "New York" was added to the following statutes: the Civil Practices Law and Rules, the Civil Service Law, and the City Charter. Throughout Section 1-02 the term "Director" was clarified to mean the Director of Representation. Throughout Section 1-03, the term "Director" was clarified to mean the Deputy Director. Throughout Section 1-06, the term "Director" was clarified to mean the Deputy Director. Throughout the rules, the numbers one through nine were written out and the numbers 10 and above were changed to numerals. The definition of "Board" was rewritten to use the same wording in the following rules: Sections 1-02, 1-03, 1-04, 1-05, 1-06, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13. The request for the name, address, telephone and fax number of a party was rewritten to use the same wording in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(u), 1-02(v), 1-03(b), 1-04(a), 1-05(b), 1-07(c), 1-07(d), 1-08(c), 1-08(d). The phrase "unit or units" was amended to "unit(s)" in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(u), 1-02(v), 1-03(b)(4). The phrase "the classes of positions (titles) of employees" was amended to "the classes of titles (positions) of employees" in the following rules: Sections 1-02(c), 1-02(d), 1-02(e), 1-02(m), 1-02(o), 1-02(u), 1-02(v). The following sections include corrections of grammatical or typographical errors: Sections 1-01, 1-02(d)(3), 1-02(e)(2)(iii), 1-02(j), 1-02(k), 1-02(m), 1-02(n)(2), 1-02(r), 1-02(t), 1-04(b), 1-05(b)(6), 1-05(c), 1-05(d), 1-05(e), 1-05(g), 1-05(i), 1-05(j), 1-05(m)(2), 1-06(e), 1-08(d), 1-08(i), 1-09(b)(2), 1-09(c), 1-11(e), 1-12(b), 1-12(c), 1-12(g), 1-12(h), 1-14(a), 1-14(b). Section 1-03(d) was amended to allow for advances in technology. The following sections were clarified to state that the reference to days is either "business" or "calendar" days: Sections 1-02(g), 1-02(h), 1-02(m), 1-02(r), 1-02(u), 1-02(v), 1-03(b), 1-03(c), 1-03(d), 1-04(b), 1-05(g), 1-05(i), 1-05(l), 1-05(m), 1-06(h), 1-07(c), 1-07(d), 1-08(f), 1-08(h), 1-10(b). The following sections were renumbered or re-lettered to accommodate for new sections or to conform to the reformatting of the document: Sections 1-02(c), 1-05(m), 1-07, 1-09(b), 1-10(h)-(m), 1-11. Section 1-05(n) was deleted as duplicative of Section 1-12(h). Section 1-12 was deleted as obsolete and the subsequent sections were renumbered accordingly. Specific Changes

Section 1-02(g) clarifies the time frame for filing a petition for certification, designation, decertification or revocation of designation pursuant to the rules and specifically incorporates wording from former §1-02(t), which defines the circumstances in which the Board may find an exception to the filing rules. Section 1-02(i) clarifies the time to file a response to petitions filed pursuant to §1-02(c), (d) or (e) of the rules, and requires that the employer provide an alphabetized list of all employees in the unit(s) sought. Section 1-02(j)(2) provides for the administrative dismissal of petitions filed pursuant to §1-02 which are insufficient or untimely. Section 1-02(m)(3) provides that within 21 days of service of a notice of proposed recognition, the employer must provide the Board with a signed certification that the notice has been posted. Section 1-02(m)(4) provides that in the event there is timely objection to a proposed recognition regarding representation, the notice of voluntary recognition will be deemed a petition pursuant to §1-02(d) of the rules. The following obsolete provision was deleted from Section 1-02(t): "The provisions of this section shall apply to certifications issued by the New York City Department of Labor prior to the effective date of the statute, or issued in a case or matter which was pending on such effective date and in which an election had been held." Section 1-02(u) is a consolidation of former §1-02(u) and (v) and sets forth the procedures for amendments to certifications. Section 1-02(v), formerly §1-02(w), sets forth the procedures for petitions for designation of persons as managerial or confidential employees. Section 1-03(c) provides that the Director or the Director's designee shall notify the parties in writing whether their request for an extension of time to commence bargaining has been granted or denied. Section 1-04 has been amended to provide for mediation assistance by the Deputy Director at the request of the parties. The last sentence in Section 1-05(g), providing for an extension of time for filing a scope petition pending the enactment of the former rules, was omitted as obsolete. Section 1-05(i) provides that the Director may approve an alternate procedure for selecting members of an impasse panel. Section 1-05(m), which sets forth the procedures for appealing a report and recommendation of an impasse panel, was amended to provide that the record of proceedings, before the impasse panel shall be filed simultaneously with the filing of the petition. Section 1-06(b) clarifies the procedures for requesting arbitration and sets forth the documents which are required for the processing of the request. Section 1-06(c) clarifies the time for serving and filing petitions challenging arbitrability. Sections 1-06(d) and 1-12(m)(2) provide for the consolidation of arbitration proceedings. Section 1-06(e) was amended to provide that at the parties' request, the Deputy Director can approve an alternate procedure for the selection of arbitrators. Section 1-06(g) was amended to clarify the procedures for the taking of stenographic records during arbitrations. Section 1-07 was repealed and reenacted in a reorganized form with different numbering to accommodate the following significant changes: · Section 1-07(b) provides for the filing of a combined scope of bargaining and improper practice petition, when appropriate, in a single petition. The combined petition must be properly titled, contain separately-labeled sections for each proceeding, and comply with the pleading requirements set forth in the rules. · Section 1-07(c), a consolidation of former §1-07(e) and (f), clarifies the requirements for pleadings and the contents thereof in proceedings brought before the Board. · Section 1-07(c)(2), formerly part of Section 1-07(d), was amended to allow the Executive Secretary to send deficiency letters when it is determined that an improper practice petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation as provided in the NYCCBL. The petitioner may serve and file an amended petition, withdraw the charge, or file objections to the deficiency letter. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary may issue either a notice that the petition is not on its face untimely or insufficient or a written decision, as was the case under the former rule, dismissing the improper practice petition. · Section 1-07(c)(6) formalizes the practice of case conferencing and mediation. · Section 1-07(c)(7) provides for amendments to pleadings, after a hearing and upon good cause shown, to amend a pleading to conform to the evidence. The request to amend shall be on notice to all parties. This subsection also provides that a petitioner may withdraw a petition before the Board at any time upon notice to all parties and that the case will be closed without consideration or review of any of the issues raised in the pleadings. · Section 1-07(d), formerly Section 1-07(l), clarifies the standard and procedures for applications for injunctive relief in improper practice cases. Notably, the amendment requires that petitions for injunctive relief be supported by affidavit(s) stating: (1) those facts personally known to the deponent that constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (2) those facts demonstrating why the alleged injury, loss, or damage is immediate and irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted, and indicating why

there is a need to maintain or return to the status quo in order for the Board to provide meaningful relief. · Section 1-07(d)(5), formerly Section 1-07(q), has been amended to provide the respondent with three business days to serve and file an answer to an injunctive relief petition. · Section 1-07(d)(6), formerly Section 1-07(r), has been amended to provide the petitioner until noon on the fourth business day to serve and file a reply in an injunctive relief proceeding. · Section 1-07(d)(3), (5), and (6) were amended to require that electronic copies of injunctive relief pleadings be filed with the Board in the manner prescribed by the Office of Collective Bargaining. Section 1-08(j) was amended to provide that a hearing may be held by a staff attorney or a Board agent. Section 1-10(b) was amended to provide that the parties are to be given at least seven business days notice of a hearing. Section 1-10(c) clarifies the duties of the trial examiners. Section 1-10(g) provides for sanctions for contemptuous conduct during hearings. Section 1-10(h) clarifies the procedures for concluding a hearing. Section 1-10(i) clarifies the procedures for a variance between pleadings and proof. Section 1-10(j) clarifies a hearing officer's authority to decide motions and objections during a hearing. Section 1-10(k) clarifies the appeal process of a hearing officer's ruling. Section 1-10(l) clarifies the procedures for re-opening of a hearing. Section 1-11(c) clarifies the procedures for issuing subpoenas. Section 1-11(d) clarifies the procedures when a party fails to testify or comply with a subpoena and deletes the unnecessary reference to the taking of depositions. Section 1-12(e) clarifies the procedures for filing papers with the Office of Collective Bargaining. Section 1-12(f) clarifies the manner to compute a time period set forth in these rules. Section 1-12(g) was amended to provide that an additional five calendar days is granted when service is by mail and that service is complete upon mailing; it was alwso amended to clarify the definitions of calendar and business days. Section 1-12(i) allows for the Director or the Director's designee to permit the withdrawal of a petition upon notice to all parties. Section 1-12(j) allows for the Director or the Director's designee to decide a motion for joinder of parties. Section 1-12(l) provides the caveat that "except as otherwise provided by these rules" and clarifies the type of responding papers to be submitted. Section 1-12(m) allows for the Director or the Director's designee to consolidate or severe two or more proceedings. Section 1-12(n), formerly §1-12(e), sets forth the procedures for requesting oral argument before the Board. Section 1-13(b) clarifies the powers and duties of the Deputy Directors. Section 1-13(c) clarifies the powers and duties of the Staff Attorneys and Board Agents. Section 1-14(a), formerly §1-15, provides for the construction of these rules.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

3 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-03 Collective Bargaining.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Bargaining notice-contents.** A bargaining notice, served and filed pursuant to §12-311(a) of the statute, shall be on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The name, address, telephone and fax numbers of the party serving the notice;

(2) The name, address, telephone and fax numbers of the party to whom the notice is directed;

(3) The expiration date of the current collective bargaining agreement and the date specified therein, if any, for service of a notice of intention to negotiate new contract terms, or a statement that there is no collective bargaining agreement in effect;

(4) A description of the appropriate bargaining unit, including the certification number or numbers of the units covered and the approximate number of employees in the units covered by the request for negotiation;

(5) A request that negotiations begin within 10 business days after service of the notice.

(c) **Extension of time-request.** A request for an extension of time to commence bargaining negotiations shall be in writing and shall be filed with the Director. A copy thereof shall be served upon the other party to the proposed negotiations. The request shall be filed at least three business days before the time when negotiations should start and shall state the reasons for the requested extension of time. The other party may serve and file its written consent or

objections to the requested extension, and its reasons therefor. The Director or the Director's designee shall notify the parties in writing whether the request is denied or granted.

(d) **Filing contracts.** Every public employer entering into a written collective bargaining agreement with a public employee organization shall file copies thereof that are in written and electronic formats with the Board within 15 calendar days after the execution of the agreement. Contracts filed with the Board shall be public records and available for inspection at reasonable times.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (b) par (4) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

4 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-04 Mediation.

(a) **Request for mediation-contents.** Unless waived by the Deputy Director, a request for the appointment of a mediation panel or mediation assistance by the Deputy Director shall be in writing, and upon notice to all parties. The request shall be filed on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The name, address, telephone and fax numbers of the other party to the collective bargaining negotiations;

(2) The date negotiations started;

(3) The termination date of the collective bargaining agreement between the parties, if any;

(4) A statement that the parties have been unable to agree on the terms of a collective bargaining agreement, and that collective bargaining will be aided by the appointment of a mediation panel or the assistance of the Deputy Director;

(5) If the request is for the appointment of a mediation panel, then the number of persons to constitute the panel, if the parties have agreed thereon;

(6) If the request is for the appointment of a mediation panel, then the names of persons who are listed on the Office of Collective Bargaining's mediation register who are to constitute the panel, if the parties have agreed thereon.

(b) **Appointment of panel.** If the Deputy Director determines that the parties have been unable to reach agreement and that collective bargaining would be aided by the appointment of a mediation panel, the Deputy Director shall

appoint a panel from the mediation register. The panel shall be of the size and shall consist of the persons agreed upon by the parties, if those persons are available. In the absence of agreement thereon, the Deputy Director shall determine the size and/or membership of the panel. No panel shall be appointed within 30 calendar days of the commencement of negotiations except upon the written request of both parties.

(c) **Panel-functions.** It shall be the duty of the panel to assist the parties to reach a voluntary and satisfactory agreement. The panel may hold separate or joint meetings with the parties or their representatives, and such meetings shall be non-public unless otherwise agreed upon by the parties, the panel and the Deputy Director.

(d) **Panel-guidance by Deputy Director.** The panel shall perform its duties under the general guidance and direction of the Deputy Director, to whom it shall report the progress of the mediation and terms of any settlement reached. If the panel is of the opinion that further mediation efforts would be unavailing, it shall so report to the Deputy Director in writing unless waived by the Deputy Director.

(e) **Confidential disclosures.** Subject to the provisions of §1-04(d) of these rules, any information disclosed by the parties to the mediation panel, and all records, reports and documents prepared or received by the panel in the performance of its duties shall be deemed confidential and shall not be disclosed.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

61 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-05 Impasse Panels.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Request for impasse panel-contents.** A request for the appointment of an impasse panel may be made jointly by the public employer and the certified or designated employee organization, or singly by either party. Unless waived by the Director, the request shall be in writing and signed by the public employer and the certified or designated employee organization or by any of them, if made singly. If the request is by a single party, a copy shall be served on the other party. The request shall be filed with the Board on a form prescribed by the Office of Collective Bargaining and shall contain:

(1) The names, addresses, telephone and fax numbers of the parties;

(2) The date when negotiations began and the date of the last meeting;

(3) The nature of the matters in dispute and any other relevant facts, including a list of the specific employer and/or employee organization demands upon which impasse has been reached;

(4) A statement that collective bargaining (with or without mediation) has been exhausted and that conditions are appropriate for the creation of an impasse panel;

(5) The size of the panel to be appointed, if the parties have agreed thereon;

(6) The names of the persons who are listed on the Office of Collective Bargaining's impasse panel register and

who are to constitute the panel, if the parties have agreed thereon.

(c) **Investigation by Director upon request.** Upon receipt of the request for an impasse panel, the Director may conduct or cause to be conducted an investigation to ascertain if the conditions for an impasse panel have been met, namely, that the collective bargaining negotiations have been exhausted and that the conditions are appropriate for the creation of an impasse panel.

(d) **Investigation by Director without request.** The Director may cause such investigation or hearing to be conducted without receipt of a request for the appointment of an impasse panel from either or both of the parties.

(e) **Director's recommendation.** If the Director concludes that collective bargaining negotiations have been exhausted and that conditions are appropriate for the creation of an impasse panel, the Director shall convey such conclusion either orally or in writing to the Board, with such information as to the nature of the dispute as the Board may require. The parties shall be notified, either orally or in writing, of the Director's recommendation. If the initial request was not a joint request, the party or parties not requesting the creation of an impasse panel shall have an opportunity to object to the recommendation, in writing, within three days after service of notice of the recommendation.

(f) **Authorization of panel.** If the Board determines that collective bargaining negotiations (with or without mediation) have been exhausted and that conditions are appropriate for the creation of an impasse panel, it shall instruct the Director to appoint such panel. In reaching its determination, the Board may conduct or direct such additional investigation, conferences or hearings as it deems advisable and proper. The Director may appoint an impasse panel, without prior consultation with the Board, upon request of both parties.

(g) **Scope of collective bargaining.** When the appointment of an impasse panel has been authorized in accordance with §1-05(f) of these rules, a petition seeking a determination whether a particular demand is within the scope of collective bargaining must be filed within 30 calendar days of the notification of such authorization. In the event a scope petition is filed during the pendency of an impasse proceeding, the matter shall be accorded expedited treatment; the impasse proceeding shall not commence until a final determination thereof by the Board or withdrawal of such petition.

(h) **Size of panel.** An impasse panel shall consist of such number of persons listed on the Board's impasse panel register as the parties may have agreed upon. In the absence of agreement, the Director shall fix the size of the panel.

(i) **Selection of panel.** If the parties have not agreed on the persons to serve on the panel, each of the parties shall receive an identical list of at least seven names chosen by the Director from the impasse panel register. Each party shall have five business days within which to number at least five of the names in order of preference, and return the list to the Director. Failure to return the list within the specified time shall be deemed approval of all persons named therein. The Director shall appoint the panel from those persons who have been approved by both parties, with due consideration for the designated orders of preference. If one or more of those approved decline or are unable to serve, the Director, to the extent necessary, shall appoint the panel members without the submission of additional lists. At the parties' request, the Director may approve an alternative procedure for selecting the members of an impasse panel.

(j) **Panel-powers and duties.** An impasse panel shall have the powers and duties set forth in §12-311(c)(3)(a) through (d) of the statute.

(k) **Hearing; record.** (1) Hearings before impasse panels shall be stenographically reported and transcribed. The parties shall share the cost thereof. Hearings shall not be public unless agreed to by the parties and the panel and approved by the Director.

(2) The record shall consist of all pleadings, exhibits and other documents submitted by the parties to the panel, the transcript of testimony taken in hearings before the panel, any statements of positions as to the issues submitted by the parties prior to, during or after the hearing, the report and recommendations issued by the panel and any other

documents which the Board, in its discretion, deems necessary and pertinent.

(l) **Panel reports-publication, acceptance or rejection.** (1) **Report and recommendations.** An impasse panel shall submit its report and recommendations to the Director, to each of the parties, and to any body, agency or official whose action is required to implement the panel's recommendations.

(2) **Publication.** The report and recommendations shall be released for publication not later than seven calendar days after its submission or, upon written agreement of the parties, filed with and approved by the Director, not later than 30 calendar days after its submission, provided that if the parties conclude a collective bargaining agreement prior to the date on which the report and recommendations is to be released, it shall not be released except upon consent of the parties communicated to the Director.

(3) **Acceptance or rejection.** Within 10 business days after submission of the panel's report and recommendations, or such additional time (not exceeding 30 calendar days from the submission of the panel report) as the Director may permit, each party shall notify the other party and the Director, in writing, of its acceptance or rejection, in whole or in part, of the panel's report and recommendations. Failure to so notify shall be deemed acceptance of the recommendations. The Director may release the acceptances and/or rejections for publication at such time as the Director may deem advisable.

(4) **Confidentiality.** The report and recommendations of the impasse panel and the acceptances and/or rejections of the parties shall be confidential records until released for publication by the Director.

(m) **Review of panel report and recommendations.** (1) **Appeal of impasse panel report and recommendations.** A party who rejects in whole or in part the report and recommendations of an impasse panel pursuant to §12-311(c)(3)(e) of the statute may appeal to the Board for review of the report and recommendations. All appeals pursuant to this subdivision must be initiated by notice of appeal and petition and may not be raised as part of an answer to the petition of another party. The record of proceedings before the impasse panel shall be filed simultaneously with the filing of the petition.

(2) **Petition.**

(i) **Contents.** A petition filed pursuant to §1-05(m) of these rules shall be signed and shall specify:

(A) The ground upon which the appeal is taken;

(B) The alleged errors of fact and/or judgment of the panel precisely identifying those parts and portions of the report and recommendations allegedly in error;

(C) Any part of the testimony and evidence relating to the report and recommendations or the grounds upon which the appeal is taken, to support the allegations of the petition;

(D) The modifications requested;

(E) Such additional matters as may be relevant and material.

(ii) **Service and filing.** The petition pursuant to §1-05(m) of these rules shall be served upon all parties, and the original and three copies thereof, with proof of service, shall be filed with the Board within 10 business days of the rejection of the report and recommendations.

(3) **Answer.**

(i) **Contents.** Respondent's answer to the petition shall be signed and shall contain:

(A) Admissions or denials of the allegations of the petition;

(B) A statement of the nature of the disagreement;

(C) Any additional facts which are relevant and material;

(D) Such other affirmative matters or defenses as may be appropriate. The answer shall be addressed solely to the petition and shall not contain any matter relating to any objections which respondent may have to the report and recommendations.

(ii) **Service and filing.** Within 10 business days after service of the petition, respondent shall serve its answer upon petitioner and any other party respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(4) **Briefs; service and filing.** Petitioner's brief, if any, shall be served and filed simultaneously with its petition. Respondent's answering brief, if any, shall be served and filed simultaneously with its answer. An original and three copies of each brief, with proof of service, shall be filed with the Board.

(5) **Oral argument; hearing.** The Board, in its discretion, may grant the request of a party for oral argument or, in a case involving allegations of any of the grounds set forth in subparagraphs (i), (ii), or (iii) of §7511(b) of the New York Civil Practice Law and Rules, may grant and direct a hearing; such request shall be filed within 10 business days after issue has been joined. The Board may direct that such oral argument or hearing be held without a request from either party where it finds that to do so will contribute to a determination of the matter.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (g) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) relettered (formerly (g)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (i) relettered (formerly (h)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (j) relettered (formerly (i)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (k) relettered (formerly (j)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (l) relettered (formerly (k)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02

Note 1]

Subd. (l) par (3) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (m) relettered (formerly (l)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (n) relettered (formerly (m)) and amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] This (n) repealed in 12/3/03 amendment.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

6 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-06 Arbitration.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Request for arbitration-service and filing; waiver; contents.**

(1) A public employer or certified or designated public employee organization which desires to arbitrate a grievance shall:

(i) file a request for arbitration on a form and in a manner prescribed by the Office of Collective Bargaining which shall contain a plain and concise statement of the grievance to be arbitrated;

(ii) serve the request for arbitration upon all parties to the agreement under which the request is being made;

(iii) when the party requesting arbitration is a public employee organization, file a waiver, signed by the grievant(s) and the public employee organization, waiving any rights to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

(2) The request for arbitration should have appended thereto copies of:

(i) The written grievance, if any;

(ii) The Step II and Step III decisions, if any;

(iii) The contract provision and/or the rule or regulation that was allegedly violated.

(c) **Service and filing of petition challenging arbitrability.**

(1) A petition for a final determination by the Board as to whether the grievance is a proper subject for arbitration shall be served and filed within 10 business days after service of the request for arbitration and the waiver upon the other party to the grievance, or the party so served shall be precluded thereafter from contesting in any forum the arbitrability of the grievance.

(2) Copies of the request for arbitration and all documents set forth in §1-06(b)(2) of these rules should be attached to a petition challenging arbitrability.

(d) **Consolidation of arbitration proceedings.** A public employer or a public employee organization may request the consolidation of arbitration cases involving the same grievant(s), identical issues or similar facts. Following such a request, cases may be consolidated at the discretion of the Deputy Director, after notice and an opportunity to be heard has been given to the other party. Except when a consolidation request is jointly made by a public employer and a public employee organization, consolidation of arbitration cases may not take place after arbitrators have been appointed in more than one of the cases proposed for consolidation. The Deputy Director's determination shall be made in writing.

(e) **Appointment of arbitrator.** If no petition pursuant to §1-06(c)(1) of these rules has been timely filed, or if the Board, after such a petition, has determined that the grievance is a proper subject for arbitration, the public employer and the public employee organization shall have 10 business days to agree upon the arbitrator. If the parties fail to do so, the Deputy Director shall submit to each party an identical list of at least seven names chosen from the arbitration register. Each party shall have seven business days in which to number at least five of the names in order of preference, and to return the list to the Deputy Director. Failure to return the list within the specified time shall be deemed approval of all the persons named therein. The Deputy Director shall appoint the arbitrator with due consideration for the designated orders of preference. If one or more of those approved decline or are unable to serve, the Deputy Director, to the extent necessary, shall appoint the arbitrators without the submission of additional lists. At the parties' request, the Deputy Director may approve an alternative procedure for the selection of an arbitrator.

(f) **Hearing-powers of arbitrator.** The arbitration shall be conducted in the manner, and the arbitrator shall have all the powers, specified in §§7505, 7506, 7507 and 7509 of the New York Civil Practice Law and Rules, so far as those sections may be applicable. Arbitration hearings shall not be public unless agreed to by the parties and the arbitrator, and approved by the Deputy Director.

(g) **Hearing-stenographic record; cost.** A stenographic record of testimony shall be made upon the request of all parties or at the discretion of the arbitrator following a request by a party. The party or parties wishing a stenographic record shall make arrangements through the Office of Collective Bargaining. The requesting party or parties shall pay the cost thereof and provide a copy to the arbitrator. If the parties agree or the arbitrator determines that the transcript is the official record of the proceedings, it must be made available to a non-requesting party for inspection at a time and place to be determined by the arbitrator.

(h) **Arbitration awards-form of award; time; publication.** (1) The award shall be in writing, signed and acknowledged by the arbitrator, and shall be delivered to the parties and filed with the Deputy Director within 30 calendar days after the close of the hearing or the filing of briefs, whichever is later, unless the time is extended by the parties.

(2) The Board, in its discretion, may publish arbitration awards.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

7 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-07 Proceedings Before the Board of Collective Bargaining.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Types of proceedings before the Board.** A party may file a petition commencing a proceeding pursuant to paragraphs (1) through (4) of this subsection. When appropriate, a party may combine proceedings brought pursuant to paragraphs (2) and (4) in a single petition. The combined petition shall be properly titled, it shall contain separately-labeled sections for each proceeding, and each section shall comply with the requirements set forth in §1-07(c) of these rules.

(1) **Interpretation of and compliance with statute.** A public employer or public employee organization which is a party to a disagreement as to the application or interpretation of the statute may petition the Board to consider such disagreement and report its conclusions to the parties and the public.

(2) **Scope of collective bargaining.**

(i) A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is within the scope of collective bargaining, including a claim of practical impact under §12-307(b) of the statute, or under an applicable executive order, or pursuant to a collective bargaining agreement, may petition the Board for a final determination thereof.

(ii) A scope of collective bargaining petition filed after the appointment of an impasse panel has been authorized in accordance with §1-05(f) of these rules shall be filed within the time provided in §1-05(g) of these rules.

(3) **Grievance arbitration.** A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is a proper subject for the grievance and arbitration procedure established pursuant to §12-312 of the statute or under an applicable executive order or pursuant to a collective bargaining agreement may petition the Board for a final determination thereof. The petition shall be filed within the time provided in §1-06(c) of these rules.

(4) **Improper practices.** One or more public employees or any public employee organization acting on their behalf or a public employer may file a petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of §12-306 of the statute and requesting that the Board issue a determination and remedial order. The petition must be filed within four months of the alleged violation and shall be on a form prescribed by the Office of Collective Bargaining.

(c) **Pleadings, Procedures and Determinations.**

(1) **Petition-contents; service and filing.**

(i) A petition filed pursuant to §1-07(b) of these rules shall be verified and shall contain:

(A) The name, address, telephone and fax numbers of the petitioner;

(B) The name, address, telephone and fax numbers of the respondent;

(C) The specific sections of the statute alleged to have been violated;

(D) A clear and concise statement, in numbered paragraphs, of the facts constituting the claim under §1-07(b) of these rules. The statement shall include the nature of the controversy and specify any provisions of the contract, executive order, or collective bargaining agreement involved; a copy of such provisions should be provided. If the controversy involves an alleged improper practice, the statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the petition;

(E) An argument with citations to legal authority in support of the claims asserted. The argument may be included either in the petition or in a separate memorandum of law;

(F) A statement of the relief requested.

(ii) A copy of the petition shall be served upon each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(iii) The public employer shall be made a party to any improper practice charge pursuant to §12-306(d) of the statute and shall file responsive pleadings in accordance with §1-07(c)(3) of these rules.

(iv) A petition filed pursuant to §1-07(b) of these rules against a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(2) **Executive Secretary Review of Improper Practice Petitions.**

(i) Within 10 business days after a petition alleging improper practice is filed, the Executive Secretary shall review the petition to determine whether the facts as alleged may constitute an improper practice as set forth in §12-306 of the statute. If, upon such review, the Executive Secretary determines that the petition is not, on its face, untimely or

insufficient, notice of such determination shall be served upon the parties by mail. Such determination shall not constitute a bar to defenses of untimeliness or insufficiency which are supported by probative evidence available to the respondent. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, the Executive Secretary may issue a decision dismissing the petition or send a deficiency letter. Copies of such decision or deficiency letter shall be served upon the parties by certified mail.

(ii) Within 10 business days after service of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board an original and three copies of a written statement setting forth an appeal from the decision with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

(iii) Within 10 business days after service of a deficiency letter from the Executive Secretary as provided in this subdivision, the petitioner may serve an amended petition upon each respondent and file the original and three copies thereof, with proof of service, with the Board. The amended petition shall be deemed filed from the date of the original petition. The petitioner may also withdraw the charge. If the petitioner does not seek to amend or withdraw the charge, but instead wishes to file objections to the deficiency letter, the petitioner may file with the Executive Secretary an original and three copies of a written statement setting forth the basis for the objection with proof of service thereof upon all other parties. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary shall issue either a notice that the petition is not on its face untimely or insufficient or a written decision dismissing the improper practice petition.

(3) **Answer-contents; service and filing.**

(i) Respondent's answer to the petition shall be verified and shall contain:

(A) Specific admissions or denials of the allegations in the petition in numbered paragraphs which correspond with those in the petition;

(B) A statement of facts with numbered paragraphs setting forth the nature of the controversy. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;

(C) Such defenses as may be appropriate;

(D) An argument with citations to legal authority in support of the defenses raised. The argument may be included either in the answer or in a separate memorandum of law.

(ii) Within 10 business days after service of the petition, or, if the petition contains allegations of improper practice, within 10 business days of the service of the notice of finding by the Executive Secretary, pursuant to §1-07(c)(2)(i) or (iii) of these rules, that the petition is not, on its face, untimely or insufficient, respondent shall serve its answer upon petitioner and any other party respondent. The original and three copies thereof, with proof of service, shall be filed with the Board. When special circumstances that warrant an expedited determination exist, it shall be within the discretion of the Director or the Director's designee to order respondent to serve and file an answer within less than 10 business days.

(4) **Reply-contents; service and filing.** Within 10 business days after service of respondent's answer, petitioner may serve and file a verified reply which shall contain admissions and denials of any facts alleged in the answer. Additional facts or new matter alleged in the answer shall be deemed admitted unless denied in the reply. The reply should be limited to a response to specific facts or arguments alleged in the answer, and the Board may disregard new facts or new arguments raised therein. When special circumstances that warrant an expedited determination exist, the

Director or the Director's designee may order petitioner to serve and file its reply within less than 10 business days. A copy of the reply shall be served on each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(5) **Briefs-service and filing.** If the parties serve separate briefs with their pleadings, the original and three copies thereof, with proof of service, shall be filed with the Board.

(6) **Case conferences and mediation.**

(i) At any time after a petition has been served and filed pursuant to §1-07(b) of these rules, the Director's designee may, on notice, schedule a case conference to discuss factual, substantive, or procedural matters. Unless special circumstances that warrant an expedited case conference exist, the conference shall not be held prior to the filing of all pleadings or less than 10 business days from the date of scheduling. Absent good cause shown, the failure of a party to appear at a case conference may constitute grounds for dismissal of the absent party's pleading.

(ii) In any proceeding commenced pursuant to §1-07(b) of these rules, the Deputy Director may require the parties to attend one mediation session to explore the possibility of a voluntary resolution of their disputes. After the first mediation session, subject to the parties' agreement or joint request, additional mediation sessions may be scheduled. The scheduling of a mediation session may not by itself toll any time limitations under these rules or require the adjournment of the filing of a pleading, a hearing, or other proceeding.

(7) **Amendments and withdrawals.** After a hearing and upon good cause shown, the trial examiner may permit a party to amend a pleading to conform to the evidence. The request to amend shall be on notice to all parties.

(8) **Determination-decision.** After issue has been joined, the Board may decide the dispute on the papers filed, may direct that oral argument be held before it, may direct a hearing before a trial examiner, or may make such other disposition of the matter as it deems appropriate and proper.

(d) **Injunctive relief for a claim of improper practice.** (1) **Applications for injunctive relief.** A party filing an improper practice petition pursuant to §1-07(b)(4) of these rules may further petition the Board to obtain or to authorize the application for injunctive relief in the Supreme Court, New York County, in accordance with the provisions of §209-a(5) of the New York Civil Service Law.

(2) **Petition-contents.** A petition for injunctive relief filed pursuant to §1-07(d)(1) of these rules shall be verified and shall contain:

(i) The name, address, telephone and fax numbers of the petitioner;

(ii) The name, address, telephone and fax numbers of the respondent;

(iii) The specific sections of the statute alleged to have been violated;

(iv) A clear and concise statement, in numbered paragraphs, of the facts demonstrating that: (1) there is reasonable cause to believe an improper practice has occurred; and (2) immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual and necessitating the maintenance of, or return to, the status quo in order to provide meaningful relief. The statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by documents and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the petition;

(v) Affidavit(s) stating, in a clear and concise manner: (1) those facts personally known to the deponent that

constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (2) those facts demonstrating why the alleged injury, loss, or damage is immediate and irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted, and indicating why there is a need to maintain or return to the status quo in order for the Board to provide meaningful relief;

(vi) An argument with citations to legal authority on the issues underlying the claims of improper practice and irreparable harm to support the application for injunctive relief. The argument may be included either in the petition or in a separate memorandum of law;

(vii) A statement of the relief requested;

(viii) A copy of the underlying improper practice petition.

(3) **Petition-service and filing.** Due to the expedited nature of a proceeding seeking injunctive relief, service by mail shall not be permitted. A copy of the petition for injunctive relief shall be served personally upon the respondent at or after the time the improper practice petition is served. When the respondent is a public employer, a copy of the petition for injunctive relief shall also be served personally on the Mayor's Office of Labor Relations. No petition for injunctive relief shall be accepted for filing unless it appears that both the improper practice petition and the petition for injunctive relief have been served personally on the designated agent of the respondent. The original and three copies of each petition, with proof of personal service, shall be filed with the Board. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining.

(4) **Answer-contents.** Respondent's answer to the injunctive relief petition shall be verified and shall contain:

(i) Specific admissions or denials of the allegations of the petition in numbered paragraphs which correspond with those in the petition;

(ii) A statement of facts with numbered paragraphs setting forth the nature of the controversy. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;

(iii) Any defenses, including defenses that could be rightfully raised in answer to the underlying improper practice petition. The failure to assert a defense in the answer to the petition for injunctive relief shall not preclude the respondent from asserting any defenses to the underlying improper practice petition;

(iv) An argument with citations to legal authority in support of the answer to the application for injunctive relief. The argument may be included either in the answer or in a separate memorandum of law.

(5) **Answer-service and filing.** Within three business days after service of an injunctive relief petition, the respondent shall serve its answer upon petitioner and any other party respondent, and shall file the original and three copies of the answer, with proof of service thereof, with the Board. This section shall not be construed to shorten the respondent's time to answer the underlying improper practice petition. The answer may be served and filed, with proof of service thereof, by personal delivery or by fax. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining. When service and filing are made by fax, a copy of the pleading must be mailed to all parties, and the original and three copies must be mailed to the Board the same day.

(6) **Reply-service and filing.** A reply is not required; any new facts alleged in the response will be deemed denied by the petitioner. If a reply is filed, it shall be verified and shall contain admissions and denials of any facts alleged in the answer. The reply should be limited to a response to specific facts or arguments alleged in the answer, and the Board may disregard new facts or new arguments raised therein. The reply shall be served and filed, with proof of service thereof, before 12:00 noon on the fourth business day after filing of the injunctive relief petition. The reply may be

served and filed by personal delivery or by fax. A copy in electronic format shall also be filed with the Board in a manner prescribed by the Office of Collective Bargaining. When service and filing are made by fax, a copy of the pleading must be mailed to all parties, and the original and three copies must be mailed to the Board the same day.

(7) **Review and determination by the Board-meetings by telephone.** Upon receipt of a properly served and filed petition for injunctive relief, the Director shall notify the Board and propose a time and date for a special meeting to consider the petition. Within 10 business days after a petition is filed, the Board shall determine whether the charging party has made a sufficient showing in accordance with the provisions of §209-a(5) of the New York Civil Service Law. The special meeting may be conducted by telephone, provided that all members who are available by telephone are joined as parties to the call. The quorum and voting requirements for any meeting by conference call shall be as provided in §12-310 of the statute. After appropriate deliberation, the Board shall vote and issue a determination as to whether the charging party has made a sufficient showing that a petition for injunctive relief to the court is warranted. Such determination shall be served on the parties by fax and by certified mail.

(8) **Petition in the Supreme Court in New York.** If the Board determines that the charging party has made a sufficient showing in accordance with the provisions of §209-a(5) of the New York Civil Service Law, the Board may petition the Supreme Court, New York County, upon notice to all parties, for the necessary injunctive relief, or, in the alternative, issue an order permitting the charging party to seek injunctive relief in the court, in which case the Board must be joined as a necessary party.

(9) **Expedited scheduling, hearing, and disposition of the underlying improper practice petition.** In conformity with the mandates of §209-a(5) of the New York Civil Service Law, any improper practice case in which the Supreme Court has granted injunctive relief shall be given preference in scheduling, hearing and disposition over all other types of matters pending before the Board. The Board shall conclude the hearing process and issue a decision on the merits within the time prescribed by §209-a(5) of the New York Civil Service Law. In order to effectuate this statutory preference and time limitation, unless the parties stipulate in writing to waive the statutory period within which the Board must render its decision on the merits, the following procedures will be enforced: (i) The time provisions set forth in §1-07 of these rules for the filing of pleadings and briefs will be strictly enforced. Under no circumstances will requests for extensions of time to serve and file pleadings and/or briefs, or requests to adjourn scheduled hearing dates, be granted;

(ii) When, in the judgment of the Office of Collective Bargaining, material questions of fact are raised, a hearing will be scheduled to commence no later than 14 calendar days after service of a copy of the order of the court with notice of entry;

(iii) Once a hearing is commenced, it shall continue on consecutive business days until it is concluded; but in no event shall the hearing continue beyond a date 21 calendar days after service of a copy of the order of the court with notice of entry;

(iv) Post-hearing briefs shall be served and filed no later than 14 calendar days after the last hearing date;

(v) After the record is closed, the trial examiner shall prepare a report and/or draft decision which shall be submitted to the Board for its consideration. The Director may call for a special meeting by telephone conference call, in accordance with the procedures set forth in §1-07(d)(7) of these rules, whenever necessary for the Board to render a decision within the time prescribed by §209-a(5) of the New York Civil Service Law. Copies of such decision shall be served on the parties by certified mail.

(10) **Notification to the court.** The Board shall promptly forward notice of its determination, together with a copy of the decision of the Board, to the court which issued the order granting injunctive relief.

HISTORICAL NOTE

Section repealed and added City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) par (1) numbered City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) par (3) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) par (1) numbered City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (i) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subds. (l)-(u) added City Record Dec. 1, 1994 eff. Dec. 31, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

8 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-08 Municipal Labor Committee.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Allocation of costs.** The costs of the salary, fees and expenses of the impartial members to be paid by members of the Municipal Labor Committee, pursuant to §1174(a) of the New York City Charter, shall be allocated among such members as provided in Article 7 of the Rules of the Municipal Labor Committee adopted October 13, 1967, or as duly amended thereafter, provided that any member of the Municipal Labor Committee may petition the Board for reallocation of said costs as herein provided.

(c) **Petition to reallocate costs-contents.** Any member of the Municipal Labor Committee may petition the Board to reallocate the costs of the salary, fees and expenses of the impartial members. The petition shall be verified and shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) An allegation that petitioner is a member of the Municipal Labor Committee required to share the costs of the salary, fees and expenses of the impartial members;

(3) A statement of the facts on which petitioner bases its contention that the current method of allocation of said costs is improper, inequitable, discriminatory or arbitrary;

(4) The proposed method of allocation of said costs which petitioner asserts should be adopted.

(d) **Petition to abrogate rule-contents.** A certified employee organization may petition the Board to abrogate a rule of the Municipal Labor Committee, which relates to voting or eligibility for membership and which is alleged to be arbitrary or discriminatory or to have been applied in an arbitrary or discriminatory manner. The petition shall be verified and shall contain:

(1) The name, address, telephone and fax numbers of the petitioner;

(2) Specification of the rule or rules involved;

(3) A statement of the facts on which petitioner bases its contention that the rule is arbitrary or discriminatory or has been applied in an arbitrary or discriminatory manner.

(e) **Petition-service and filing.** A petition pursuant to §1-08(b) or (c) of these rules shall be served on the Municipal Labor Committee, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(f) **Answer-service and filing.** Within 10 business days after service of the petition, the Municipal Labor Committee shall serve a copy of its answer upon the petitioner and file an original and three copies thereof, with proof of service with the Board.

(g) **Answer-contents.** The answer shall be verified and shall contain:

(1) Admissions or denials of the allegations of the petition;

(2) Such additional facts and affirmative matter as may be relevant, material and appropriate.

(h) **Reply-service; contents.** Within 10 business days after service of the answer, petitioner may serve and file a verified reply which shall contain admissions and denials of any additional facts or new matter alleged in the answer. Additional facts or new matter alleged in the answer shall be deemed admitted unless denied in the reply. A copy of the reply shall be served on the respondent, and an original and three copies thereof, with proof of service, shall be filed with the Board.

(i) **Briefs-service and filing.** Briefs, if any, may be served and filed as provided in §1-07(c)(5) of these rules.

(j) **Determination-decision.** After issue has been joined, the Board may decide the matter on the papers and briefs filed, may direct that oral argument be held before it, may direct a hearing before a trial examiner, or may make such other disposition of the matter as it deems appropriate and proper.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

61 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-09 Panel Register-Fees and Expenses.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) **Registers.**

(1) As deemed necessary by the Director, separate registers shall be maintained of impartial and qualified persons experienced in:

(i) mediation;

(ii) impasse resolution;

(iii) arbitration.

(2) To be listed on a register, a person shall be approved by the Board as required by the statute. A person may be listed on more than one register. All mediation and impasse panels shall consist of, and all arbitrators shall be, persons listed on the applicable register except when the parties agree otherwise. A resume of the background, experience and qualifications of each person on a register shall be maintained and shall be available for inspection.

(c) **Fees and expenses.** (1) Members of mediation and impasse panels and arbitrators shall be paid a per diem fee to be determined by the Board unless the parties to the dispute shall have agreed to a different fee, and shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The public employer and public employee organization which are parties to the particular negotiation or grievance shall each pay 50 percent of

such fees and expenses and related expenses incidental to the handling of deadlocked negotiations and unresolved grievances.

(2) Panel members, arbitrators, reporting services and any other persons providing services, accommodations, or materials relating to the work of the panel or arbitrators shall bill the parties directly for their compensation and expenses, and shall file a copy thereof with the Board.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

10 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-10 Hearings.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Notice of hearing.** Except where otherwise provided by law or these rules, the Board shall give all parties at least seven business days notice of hearings, provided that a shorter period may be stipulated by the parties or may be prescribed by the Director or the Director's designee when the circumstances so require.

(c) **Conduct of hearings.** Hearings shall be conducted by a trial examiner. At any time, a trial examiner may be designated to take the place of the trial examiner previously designated to conduct a hearing. Except as otherwise provided, all hearings shall be open to the public. During the course of any hearing, the trial examiner, shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. It shall be the duty of the trial examiner to see that a full inquiry is made into all the facts in issue and to obtain a complete record of all facts necessary for a fair determination. The trial examiner shall have the right to call and examine witnesses, to issue subpoenas as permitted by law, to direct the production of evidence and to introduce evidence into the record, except as may otherwise be limited herein.

(d) **Rights of parties.** In any hearing, all parties shall have the right to call, examine and cross-examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the trial examiner, except as otherwise provided in these rules.

(e) **Stipulations.** At a hearing, stipulations may be introduced in evidence with respect to any issue, if such

stipulation has been joined in by all the relevant parties.

(f) **Adjournments-continuation.** The trial examiner may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by other appropriate notice.

(g) **Contemptuous conduct.** The refusal of a witness to answer any question which has been ruled to be proper shall, at the discretion of the trial examiner, be grounds for striking testimony previously given by such witness. Misconduct at any hearing conducted under these rules shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the Board or its agents after due notice and opportunity to be heard.

(h) **Conclusion of proceedings.** The trial examiner may permit or direct the parties to present closing statements and/or to file briefs or memoranda in a proceeding brought under §1-02, §1-07 or §1-08 of these rules. The time for closing statements or filing briefs or memoranda shall be fixed by the trial examiner. An original and three copies of the briefs or memoranda, with proof of service, shall be filed.

(i) **Variance between pleadings and proof.** A variance between an allegation in a pleading and the proof shall not be deemed material unless it is so substantial as to be misleading. If a variance is not material, the trial examiner may admit such proof and the facts may be found accordingly. A party may move to amend a pleading to conform to the evidence in accordance with §1-07(c)(7) of these rules.

(j) **Motions and objections during the hearing.** The trial examiner shall have the discretion to decide all motions and objections made at the hearing and to decide whether an oral motion should be reduced to writing and submitted to the Board. All such motions and objections and the rulings and orders thereon shall be made part of the record.

(k) **Appeal of trial examiner's rulings.** Unless expressly authorized by the Director, the Board shall not entertain appeals from a trial examiner's rulings prior to the Board's consideration of the entire record for decision. Appeals from a trial examiner's rulings shall be made in writing upon notice to the other parties after the close of the hearing and may be included in post-hearing briefs, if so filed.

(l) **Reopening of hearing prior to issuance of Board decision.** Motions for leave to reopen a hearing because of newly discovered evidence shall be promptly made. The Board, in its discretion or on its own motion, may reopen a hearing and take further testimony.

(m) **Objections-waiver.** An objection not duly made at a hearing shall be deemed waived unless the failure to raise such objection should be excused because of extraordinary circumstances.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (c) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (g) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (h) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] This

(h) repealed in 12/3/03 amendment.

Subd. (k) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

61 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-11 Witnesses and Subpoenas.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Witnesses-examination; depositions.** Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept. If any witness resides outside the State of New York or through illness or other cause is unable to testify at the hearing, that witness's testimony or deposition may be taken in such form as may be directed by the trial examiner. All applications for taking such testimony or deposition shall be made by motion.

(c) **Subpoenas-issuance.** A member of the Board, a Deputy Director, or a trial examiner may issue subpoenas at any time, except as limited by law, requiring persons, parties, or witnesses to attend and be examined or give testimony, or to produce any document or thing that relates to any matter under investigation or any question before the Board or trial examiner conducting a hearing. Pursuant to CPLR §2302, attorneys admitted to the practice of law in New York State may also issue subpoenas in accordance with applicable law.

(d) **Subpoenas-parties; failure to obey or testify.** If a witness, party, or agent thereof refuses or fails, without reasonable excuse, to answer any question which has been ruled pertinent or proper, or obey any subpoena duces tecum, the trial examiner may strike from the record the pleading and/or all testimony and evidence offered on behalf of such party at the hearing, or may strike all or a portion of the testimony or evidence offered by or through the uncooperative party or witness, or strike those portions of the pleading which are related to the matter(s) called for in the subpoena, or which are based solely on testimony or evidence offered by or through the uncooperative party or witness.

(e) **Witness fees.** When determined by the trial examiner to be appropriate, witness fees and mileage in amounts allowable under the New York Civil Practice Law and Rules shall be paid by the party at whose instance the witnesses appear, or by the Office of Collective Bargaining if the witnesses appear at the request of the Board.

HISTORICAL NOTE

Section amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] Became (b) in 12/3/03 amendment.

Subd. (d) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1] Became (e) in 12/3/03 amendment.

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

12 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-12 Decision after Hearing; Trial Examiner's Intermediate Report; Exceptions; Oral Argument; Briefs. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (d) par (2) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

13 of 15 DOCUMENTS

Rules of the City of New York

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

61 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-12 General Provisions.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Form of documents-docket number.** All petitions, pleadings, motions, briefs and other formal papers shall bear the title of the proceeding and the docket number. Any document other than the initial petition which does not bear the docket number may be returned to the sender. However, failure to include a docket number which is promptly corrected will not be a bar to an otherwise timely filed pleading.

(c) **Service of papers-Board.** Notices of hearings and other process of the Board, their members, deputies and agents, may be served personally or by mail. Subpoenas issued by the Board shall be served personally.

(d) **Service of papers-party.** (1) Except as provided for herein, bargaining notices, requests for arbitration, petitions and other papers served on behalf of a party shall be served personally or by mail. A signed written statement that service has been effected, stating the name and the address of the party served and the date and manner of service, shall constitute prima facie proof of service. Subpoenas issued by a party shall be served personally.

(2) Service of papers by fax or other electronically formatted means, followed by mail, shall be permitted, provided that a telephone number or other station is designated by the receiving party for that purpose. The designation of a telephone number or other station for service by electronic means in the address block subscribed on paper served or filed in the course of a proceeding shall constitute consent to service by electronic means in accordance with this subdivision. A party may change or rescind a number or address designated for service of documents by serving a

notice on the other parties.

(3) Any petition required by these rules to be served on a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(4) If a party appears in a proceeding by attorney, all papers in such proceeding shall thereafter be served on such attorney unless the party requests otherwise.

(e) **Filing of papers.** Unless otherwise provided in these rules, all petitions, pleadings, motions, briefs and other formal papers may be filed with the Office of Collective Bargaining by mail or personally between the hours of 9:00 a.m. and 5:30 p.m. Except as otherwise provided in these rules, the filing of papers with the Board by fax or other electronic means shall be permitted only when prior approval has been granted by the Board or its designee and upon such conditions as that approval may be based.

(f) **Time-computation.** In computing any period of time prescribed or allowed by these rules, or by order or direction, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday or legal holiday, in which event the period shall run to the next business day. Unless otherwise provided in these rules, when any period of time prescribed or allowed is 10 days or fewer, they shall be considered business days, and intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Unless otherwise provided in these rules, when the period of time prescribed or allowed is greater than 10 days, they shall be considered calendar days and intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(g) **Time-service by mail.** When a period of time is measured from the service of a paper, and service is by mail, five calendar days shall be added to the prescribed period. Service by mail is complete upon mailing.

(h) **Time-Board action.** Except as prescribed by statute, the Director or a Deputy Director acting in his/her absence, for good cause shown, may extend or shorten any time limit prescribed or allowed in these rules. When good cause exists, the Director or Deputy Director acting in his/her absence, acting with the approval of the Board, may shorten time limits and invoke expedited procedures in bringing disputes to mediation, arbitration or to impasse proceedings. Approval of such action by the Board shall require the concurrence of at least one labor member and one city member. In the exercise of such extraordinary powers, the Director or Deputy Director acting in his/her absence shall be authorized to prescribe such times and conditions for the service of notices, filing of pleadings and appearances of parties as the circumstances require and as considerations of due process permit.

(i) **Petition-withdrawal.** At the request of the petitioner, upon notice to all other parties, the Director or the Director's designee may permit the withdrawal of a petition. The case will be closed without consideration or review of any of the issues raised in the pleadings.

(j) **Parties-non-joinder and misjoinder.** No proceeding will be dismissed because of non-joinder or misjoinder of parties. Upon motion of any party, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed proper by the Director or the Director's designee.

(k) **Intervention-procedure; contents; filing; service.** A person, public employer or public employee organization desiring to intervene in any proceeding shall file a verified written application and three copies thereof, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. Such application must be timely made, served on all parties and filed with proof of service. Failure to serve or file such application as above provided shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided.

(l) **All other motions.** Except as otherwise provided by these rules, all motions, other than those made during a

hearing, shall be made in writing, shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within 10 business days thereafter file the original and three copies thereof, with proof of service. Answering papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the moving papers. Reply papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the answering papers. All motions shall be decided upon the papers unless oral argument, or the taking of testimony, is directed, in which event the parties will be notified thereof and of the time and place for such argument or for the taking of such testimony.

(m) **Consolidation or severance.** (1) Two or more proceedings may be consolidated or severed by the Director or the Director's designee on notice stating the reasons therefor, with an opportunity to the parties to make known their positions. For purposes of this subdivision the term "proceedings" shall include but not be limited to representation, mediation, impasse, arbitrability, improper practice, and scope of bargaining pro- ceedings.

(2) Two or more arbitration proceedings may be consolidated at the discretion of the Deputy Director following a request by a public employer or a public employee organization pursuant to §1-06(d) of these rules.

(n) **Oral argument before the Board.** In a proceeding brought under §§1-02, 1-07 or 1-08 of these rules, request for oral argument before the Board must be submitted in writing to the Director with proof of service on all parties not less than five business days prior to the Board meeting for which the case has been placed on the agenda. The granting or denial of permission to argue orally before the Board shall be within the discretion of the Board. At the discretion of the Board, oral argument may be stenographically recorded.

HISTORICAL NOTE

Section renumbered and amended (former §1-13] City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Former §1-13 in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (1) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (2) added City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) par (3) renumbered (formerly (2)) City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (e) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (f) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (j) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (k) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

61 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-13 Designation, Powers, and Duties of Deputies and Trial Examiners.

(a) **Definition.** Board. As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Deputy Directors.** Deputy directors, in addition to all other powers conferred upon them by these rules and in addition to the powers of trial examiners, are authorized and empowered to sign and issue notices and reports, certify copies of papers and documents, direct trial examiners, and designate the members of mediation, impasse and arbitration panels in accordance with the provisions of the statute and these rules.

(c) **Trial Examiners.** All trial examiners duly designated by the Director, in addition to all powers otherwise conferred upon them, are hereby authorized and empowered to:

(1) Conduct conferences, investigations and hearings, resolve discovery disputes limited to the production of documents, grant extensions of time, administer oaths and affirmations, issue or apply for subpoenas, review and copy evidence, examine witnesses, and receive evidence;

(2) Investigate concerning the representation of employees;

(3) Appear for and represent the Board and/or the Office of Collective Bargaining in court;

(4) Do any and all things necessary and proper to effectuate the policies of the statute and these rules.

HISTORICAL NOTE

Section renumbered and amended (former §1-14) City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See T61 §1-02 Note 2]

DERIVATION

Former §1-14 in original publication July 1, 1991.

Subd. (b) par (2) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

Subd. (c) open par amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

61 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 61 Office of Collective Bargaining

CHAPTER 1 PRACTICE AND PROCEDURE*1

§1-14 Construction and Amendment of Rules.

(a) **Construction.** (1) These rules shall be liberally construed and shall not be deemed to limit any powers conferred by the statute, nor to limit the power of any impartial member or Deputy Director to serve as a member of a mediation or impasse panel or as an arbitrator in matters pending at the Office of Collective Bargaining, provided, however, that no full-time employees authorized to perform such service shall receive additional compensation for the performance of any such service.

(2) Words in the singular shall include the plural and words in the plural shall include the singular.

(b) **Amendments.** Any rule may be amended or rescinded at any time in accordance with the City Administrative Procedure Act, Chapter 45 of the New York City Charter.

HISTORICAL NOTE

Section renumbered and amended (formerly §1-15) City Record Dec. 3, 2003 eff. Jan 2, 2004. [See

T61 §1-02 Note 2]

DERIVATION

Former §1-15 in original publication July 1, 1991.

Subd. (b) amended City Record Aug. 6, 1997 eff. Sept. 5, 1997. [See T61 §1-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 1 amended City Record Dec. 3, 2003 eff. Jan. 2, 2004. [See §1-02 Note 2]

Rules of the City of New York

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

62 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-01 General Rules.

(a) The regular public hearings of the City Planning Commission shall be held twice monthly on Wednesday at 10 a.m. in City Hall, unless otherwise ordered by the Chair. Other regular public meetings of the City Planning Commission, also known as Review Sessions, shall be held twice monthly on Monday at 22 Reade Street, Spector Hall unless otherwise ordered by the Chair. The time and location of any meeting may be confirmed by contacting the Office of the Calendar Officer at the Department of City Planning.

(b) Special meetings of the City Planning Commission may be called by the Chair or by seven members.

(c) A quorum shall consist of seven members.

(d) Final action by the Commission shall be by the affirmative vote of not less than seven members at a meeting open to the public.

(e) Except by unanimous consent, matters upon which public hearings are required by law shall lie over until the next meeting following the public hearing.

(f) The order of business at regular public hearings shall be as follows unless otherwise ordered by the Chair.

(1) Roll call.

(2) Approval of minutes of previous meetings.

(3) Scheduling dates for future hearings.

(4) Public Hearings.

(5) Reports on previously heard items.

(g) Matters not on the calendar shall be considered only by unanimous consent.

(h) The Chair shall direct a roll call upon every proposition to be acted upon pursuant to §§195, 197-a, 197-c, 200 and 201 of the Charter of the City of New York (the Charter). Votes shall be taken by the ayes and nays.

(i) The vote upon every proposition voted upon shall be recorded in the minutes.

(j) The Chair shall establish the order in which speakers are heard at public hearings. Speakers shall be limited to no more than three minutes to present testimony unless more time is permitted by the Chair.

(k) City employees designated by the Chair shall be the only persons allowed within the guard rail of the dais during public meetings.

(1) All reports of the Commission or its members pertaining to matters acted on by the Commission shall be incorporated in the record.

(m) All proposals scheduled for public hearings shall be duly advertised in accordance with Charter provisions and all applicable laws.

(n) The public may attend all meetings of the Commission, including public hearings, except that the Commission may close such a meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (b) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) par (4) repealed and added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (f) par (5) repealed and added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (h) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (j) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (k) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (l) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (m) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

Subd. (n) added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 10, 1997:

Chapter 1 and Chapter 2 of Title 62 of the Rules of the City of New York are being amended for several reasons: to clarify the practices and procedures of the City Planning Commission and to bring these rules into conformance with the actual practice of the Commission and its staff; to effectuate cost savings with respect to transcripts of hearings; to repeal various provisions that have been rendered obsolete or superseded by amendments to the City's Zoning Resolution or amendments to the City Charter; and finally, to make technical and typographical corrections to the rules.

Rules of the City of New York

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

62 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-02 The Calendar Officer: Notices, Calendars, Minutes, Record, and Commu- nications.

(a) Notices of all special meetings shall be given to each member by the Calendar Officer.

(b) The Calendar Officer shall prepare a calendar of the business to be presented and considered at each public meeting. The matters thereon shall be arranged in the order prescribed by §1-01(f), and shall be properly classified. The Calendar Officer shall also keep a record of undetermined matters which have been laid over.

(c) **Record.** The record of a public meeting, including a public hearing, shall consist of either a tape recording or verbatim stenographic record of the proceedings; a list of speakers' names and affiliations, if any; a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the proposal; and any exhibits or written statements offered by speakers. The record shall be available at the Calendar Office, City Planning Commission, Room 2E, 22 Reade Street, New York, New York 10007-1216. The Department of City Planning shall make available for public inspection, at the above location, a complete transcript of all public hearings of the Commission within sixty (60) days of such hearing.

(d) The Calendar Officer shall maintain the minutes of each public meeting, and shall make them available for examination by the public in the Office of the Calendar Officer.

(e) Minutes and a record of votes shall be taken at any executive session to the extent required by §106 of the Public Officers Law.

(f) All communications, petitions and reports intended for consideration shall be addressed to the Commission and

delivered at or mailed to the Calendar Office and shall consist of an original accompanied by seventeen copies.

(g) The Calendar Officer shall transmit to the City Council and other city departments affected thereby true copies of all reports and resolutions adopted.

HISTORICAL NOTE

Section amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Section in original publication July 1, 1991.

3 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-03 Suspension of Rules.

The suspension of any of the rules of Practice and Procedure of the City Planning Commission may be ordered by unanimous vote.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

62 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-04 Natural Feature Restoration Fee. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 29, 2007 §1, eff. June 28, 2007. Language transferred to T62 §3-08.

Section renumbered (formerly §1-07) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1] Former §1-04 Petitions Requesting a Change of Zone Pursuant to §201 of the Charter from original publication was repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997.

Section in original publication July 1, 1991.

5 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-05 Applications for Approval of Projects in the Lincoln Square Special District. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Section in original publication July 1, 1991.

6 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 1 PRACTICE AND PROCEDURE OF CITY PLANNING COMMISSION

§1-06 Renewal of Authorization or Special Permit. [Repealed]

HISTORICAL NOTE

Section repealed City Record Aug. 17, 1995 eff. Sept. 16, 1995. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 17, 1995:

The repeal to the City Planning Commission's Rule removes a discrepancy that now exists between the Rule and the newly adopted text amendments to Section 11-42, 11-43, 74-99, 78-07, and 79-44 pertaining to the lapse provisions for authorizations and special permits in the Zoning Resolution. These text amendments now replace the Rule repealed.

7 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-01 Actions Subject to Procedure.

The land use review procedure which is set out herein shall govern the following actions:

(a) changes in the City Map pursuant to Charter §§198 and 199;

(b) approval of a map of a subdivision or the platting of land into streets, avenues or public places pursuant to Charter §202;

(c) designations of zoning districts under the Zoning Resolution, including conversion from one land use to another land use pursuant to Charter §§200 and 201;

(d) adoption of special permits within the jurisdiction of the City Planning Commission (hereafter: "the Commission") under the Zoning Resolution pursuant to Charter §§200 and 201;

(e) selection of sites for capital projects pursuant to Charter §218;

(f) granting of revocable consents pursuant to Charter §364, requests for proposals and other solicitations for franchise pursuant to Charter §363 and major concessions as defined pursuant to Charter §374;

(g) authorization of improvements in real property, the costs of which are payable other than by the City pursuant to Charter §220;

(h) approval of housing or urban renewal plans and projects pursuant to City, State or Federal laws;

(i) approval of sanitary or waterfront landfills pursuant to applicable Charter provisions or other provisions of law;

(j) approval of sale, lease (other than lease of space for office uses), exchange or other disposition of real property of the City and, sale or lease of land under water pursuant to Charter §1602, Chapter 15 or other applicable provisions of law;

(k) acquisitions by the city of real property (other than acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to Charter §1602, Chapter 15, or other applicable provisions of law;

(1) for purposes of review by a community board or, where appropriate, by community boards and a borough board, the granting by the Board of Standards and Appeals of a variance of the Zoning Resolution pursuant to Charter §668(2);

(m) for purposes of review by a community board or, where appropriate, by community boards and a borough board, the granting by the Board of Standards and Appeals of a special permit assigned to its jurisdiction under the Zoning Resolution pursuant to Charter §668(2);

(n) such other matters involving the use, development or improvement of property as proposed by the Commission and enacted by the City Council pursuant to local law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

8 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-01.1

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-01.1 Zoning Resolution Amendments Adopted Pursuant to City Charter §200 or §201.

Applications to amend the Zoning Resolution pursuant to City Charter §201 and actions to amend the Zoning Resolution initiated by the Commission pursuant to Charter §200, which concern revisions to the text of the Zoning Resolution, shall be subject to the provisions of subdivisions (b), (c), (d) and (g) of §2-06 and subdivision (c) of §2-02 of these rules.

HISTORICAL NOTE

Section added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

9 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-02 Applications.

(a) **Applications: general provisions.** (1) **Presentation of application.** A request for any action shall be submitted to the Department of City Planning, Central Intake Room. The application must be submitted upon the proper forms for the action as provided by the Department, including forms requesting information required for the "doing business database" established by Local Law 34 for the year 2007, and must be accompanied by all of the information and documents required by such forms in the appropriate number of copies specified thereon. For purposes of the acquisition of property by the City, pursuant to §§2-01(e) and 2-01(k) of these rules, the applicant shall be the requesting agency and the Department of Citywide Administrative Services. For purposes of the approval of housing or urban renewal plans and projects or amendments thereof pursuant to City, State or Federal laws in accordance with §2-01(h) of these rules, the applicant shall be the New York City Department of Housing Preservation and Development or the New York City Housing Authority, as appropriate, or their designees.

When presented at Central Intake, the application shall be accompanied by payment of the required fee, if any. Central Intake will not accept incomplete applications or applications without the required fee.

(2) **Initial Review.** The Department of City Planning shall, within five (5) days, review each application to insure that all required forms, documents and other exhibits supplied have been submitted and prepared in the manner required by the instructions. If any of the documentation is missing or has been improperly prepared, the application will be returned with a listing of its deficiencies. If the documentation is in order, the Department shall assign a docket number and shall send a Notice of Receipts of the application to all the appropriate Department divisions and other agencies which review such application, and to the community board(s), Borough Presidents, borough board (when appropriate), the City Council and the applicant in accordance with §2-02(b). Such Notice of Receipt, when sent to the community

board(s), Borough President(s), borough boards and City Council shall include a copy of the application form and all documents and exhibits attached thereto.

(3) **Substantive Review.** The application form, documents and other exhibits shall be subject to review by the appropriate divisions of the Department in order to insure that the requirements for completeness in §2-02(a)(5) have been met prior to certification of the application into ULURP. The Department may request any additional documents, maps, plans, drawings or information necessary to complete or organize the submission, or to clarify its substance and the land use issues attendant to it. The Department of City Planning shall refer such additional application documents or amendments within five (5) days to each affected borough president, community board or borough board, and to the City Council.

Not later than sixty (60) days after the Notice of Receipt has been sent, the Department of City Planning shall notify the applicant of any deficiencies or errors in the application, documents and other exhibits, and shall make any requests for revised or supplementary documents and exhibits. The applicant is expected to respond within a reasonable time. Upon receipt of the corrected, revised or supplementary material, the Department of City Planning shall review it within a period of not more than sixty (60) days and make any additional request for further corrections or supplements if needed.

If the applicant fails to respond within sixty (60) days after the receipt of a request for revisions, corrections or supplement, the Department of City Planning shall give notice to the applicant that the application will be deemed withdrawn.

(4) **Appeal for Certification.** At any time after one hundred and eighty (180) days have elapsed from the date of the Notice of Receipt of any application, the applicant may appeal in writing to the Commission to certify the application as complete. The affected Borough President may also appeal in writing if the Borough President finds that the application is consistent with the land use policy or strategic policy statement of the borough formulated pursuant to §82, subsection 14 of the Charter. Upon receipt of such an appeal, the Commission shall refer it to the Department of City Planning and the Office of Environmental Coordination or lead agency for an evaluation of the completeness of the application, which shall include an identification of all material requested by the Department of City Planning and the environmental review staff or lead agency not yet provided by the applicant. If the Commission determines that all pertinent information has been supplied in accordance with the criteria of §2-02(a)(5) below, it shall certify the application as complete. If the Commission determines that pertinent information has not been supplied, such information shall be listed by the Department of City Planning and the environmental review staff and sent by the Commission to the applicant within thirty (30) days of receipt of the appeal. When the applicant has responded, either by supplying all the information so requested, or by explaining why such information should not be required in order to certify the application, the Commission shall consider the evaluation and the applicant's response and either certify the application as complete in accordance with §2-02(a)(5) or deny the appeal. A denial by the Commission shall state the information that must still be supplied or clearly state the reason for denial. Such determination shall be made not later than sixty (60) days from the date the appeal is received. If the appeal is one which has been made by the affected Borough President, and the land use proposed in the application is consistent with the land use policy or strategic policy statement of the affected Borough President, then a vote of five members shall be sufficient to certify the application as complete in accordance with §2-02(a)(5) below. In all other instances, a majority vote of the Commission is necessary to certify an application.

A denial of the appeal shall mean that the application remains incomplete, and the Department of City Planning and the environmental review staff shall continue with timely review of the application until all the information required for completeness has been provided at which time certification shall take place. If such review continues for an additional one hundred and eighty (180) days or more beyond the denial, the applicant may again appeal to the Commission under the procedure outlined above to certify the application.

(5) **Certification of Completeness.** The Department or the Commission shall certify the application as complete

when compliance has been achieved with all of the following:

(i) The standard application form, including for any application certified on or after April 14, 2008, forms requesting information required for the "doing business database" established pursuant to Local Law 34 for the year 2007, has been filled out in its entirety with all requested information presented in clear language.

(ii) All accompanying documents, maps, plans, drawings and other information, are properly organized and presented in clear language and understandable graphic form.

(iii) The information supplied on the application form and accompanying documents is fully sufficient to address all issues of jurisdiction and substance which are required to be addressed for the category of action as defined in the Charter, statutes, Zoning Resolution, Administrative Code or other law or regulation.

(iv) All reviews by necessary and related agencies of the State and City have been completed and any required reports, certifications, sign-offs or other such agency actions required by law or regulation prior to ULURP have been secured or written waiver of the agency presented. If any such agency does not respond within sixty (60) days, it will be deemed to have waived its review and action as applicable law permits.

(v) A determination has been made whether the action is subject to City or State Environmental Quality Review, and if so subject, the lead agency has issued either:

(A) a Negative or Conditional Negative Declaration; or

(B) a Notice of Acceptance of a Draft Environmental Impact Statement.

(vi) Notification of any proposed (E) designation has been submitted to the Department of City Planning as required pursuant to §2-02(e) hereof.

(b) **Referrals: general provisions.** Except as provided in §2-02(c) hereof, within nine (9) calendar days after the certification by the Department of City Planning (or the Commission if certification occurs pursuant to §2-02(a)(4) above) that a submission is a complete application, the Department of City Planning shall make the following referrals:

(1) any application relating to a proposal which occupies or would occupy land located in only one community district shall be referred to the community board for such district;

(2) any application relating to a proposal which occupies or would occupy land located in two or more community districts shall be referred to the community board for each such district and to the borough board for the appropriate borough;

(3) any application relating to a proposal which occupies or would occupy land located in a joint interest area not included within a community district shall be referred to the community board for each community district bounding such area and to the borough board for the appropriate borough;

(4) all applications shall be referred to the Borough President of the borough in question;

(5) all applications shall be referred to the City Council.

(c) **Charter §201 applications.** A request for an amendment to the Zoning Map or the text of the Zoning Resolution by a taxpayer, community board, borough board, Borough President, the Mayor or the Land Use Committee of the Council pursuant to Charter §201, shall be filed with the Department. Applications for special permits pursuant to §201 may be filed by any person or agency. Such requests shall be subject to the application and certification procedure of §2-02(a) hereof and shall be referred pursuant to §2-02(b) hereof.

(d) **Withdrawals.** An applicant may at any time file with the Commission a statement that its application is withdrawn. If withdrawal occurs after filings have occurred pursuant to §2-06(h)(4) of this chapter, the applicant shall also file a statement of withdrawal with the City Council. Upon the filing of such a statement, the application in question shall be void and no further processing of such application under this uniform land use review procedure shall be undertaken by a community board, Borough President, borough board or the Commission. The Commission shall promptly give notice of such withdrawal to the board or boards, to the Borough President to which the application was referred pursuant to §2-02(b) and to the Council, if filings pursuant to §2-06(h)(4) of this chapter have not occurred. The request to which the application relates may thereafter be advanced only in connection with a new application certified as complete pursuant to §2-02(a) herein and processed according to this uniform land use review procedure.

(e) **Notification of proposed (E) designation.**

(1) In the event that an application for an amendment to the Zoning Map pursuant to Charter §197-c and §200 or §201 includes an (E) designation for potential hazardous material contamination on any tax lot or zoning lot pursuant to §11-15 of the Zoning Resolution of the City of New York, at the time the application is referred pursuant to §2-02(b) hereof the owner or owners of any such tax lot or zoning lot shall be notified of the proposed (E) designation. Such notification shall be by the lead agency, as defined in 6 New York Code of Rules and Regulations, Part 617, as amended, and 62 Rules of the City of New York §5-02, as amended. In the event the lead agency is other than the Commission, no application for an amendment to the Zoning Map shall be certified as complete pursuant to §2-02(a)(5) hereof until such other lead agency shall have submitted any notification of a proposed (E) designation, in the form and addressed to the parties required by this Section to the Department of City Planning, who shall send such notification in the manner provided by this Section.

(2) Such notification shall be by first-class mail and shall be made to the person(s) or entity(ies) identified in the official records of the City of New York as the fee owners of such tax lot or zoning lot and shall be sent to the address or addresses indicated in such records.

(3) The notification shall:

(i) describe the existing zoning and the proposed rezoning for the properties that will include the (E) designation;

(ii) inform the property owner of the right to attend and testify at any public hearing relating to the proposed Zoning Map amendment;

(iii) provide the phone numbers for a contact person at the lead agency, or if the lead agency is the Commission, a contact person or persons at the Department of City Planning;

(iv) be accompanied by a copy of §11-15 of the Zoning Resolution of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Mar. 13, 2008 §1, eff. Apr. 12, 2008. [See Note 2]

Subd. (a) par (1) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (a) par (5) subpar (i) amended City Record Mar. 13, 2008 §2, eff. Apr. 12, 2008. [See Note 2]

Subd. (a) par (5) subpar (vi) added City Record Jan. 22, 1996 eff. Feb. 21, 1996. [See Note 1]

Subd. (e) added City Record Jan. 22, 1996 eff. Feb. 21, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 22, 1996:

Section 11-15(d) of the Zoning Resolution of the City of New York requires that the City Planning Commission adopt rules "to provide notification of a proposed (E) designation to the owner(s) of the property to be so designated not less than 60 days prior to such designation." This rule provides the standards for providing such notification.

2. Statement of Basis and Purpose in City Record Mar. 13, 2008: This rule is promulgated pursuant to the authority of the City Planning Commission, under §§192, 197-c and 1043 of the New York City Charter, and pursuant to the authority of the Department of City Planning pursuant to §1043 of the New York City Charter and §3-702(18) of the Administrative Code of the City of New York. In accordance with Local Law 34 of 2007, City agencies must cooperate in the creation of a database (the "Doing Business Database"), the purpose of which is to keep a unified record of all entities and persons who are doing business with the City and to facilitate compliance with the New York City Campaign Finance Act. This rule will require that applications presented to City Planning include all forms necessary for the Doing Business Database. This rule is also proposed to clarify that the applicant with respect to applications for approval of housing or urban renewal plans and projects pursuant to City, State or Federal laws in accordance with Chapter 2 of Title 62, §2-01(h) of the Rules of the City of New York, is the housing agency of jurisdiction.

CASE NOTES

¶ 1. Charter §197-c has no legal requirement for a superseding restrictive declaration to be included in order for a land use application to be complete. Charter §197-c(a), (b), (c), (i) and the implementing regulations, 62 RCNY 2-02(a)(5)(iv), (v) do not make the filing of a superseding restrictive declaration a prerequisite to deeming an application complete for ULURP notification and processing purposes. Coalition against Lincoln W. v. City of New York, 208 AD2d 472 affirmed, 86 NY2d 123 [1995].

62 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-03 Community Board Actions.

(a) **General provisions.** (1) Except as provided below, within sixty (60) calendar days after a community board's receipt of a complete application referred by the Department of City Planning, the Board of Standards and Appeals or the Commission as the case may be, the community board shall hold a public hearing and adopt and submit as provided herein a written recommendation concerning such application. For purposes of this paragraph (1), a community board shall be deemed to have received an application nine (9) calendar days after the date of certification. The Department of City Planning shall insure delivery of a certified application by either mailing to the community board within five (5) days of the date of certification or by hand delivery within eight (8) days from the date of certification.

(2) Where the negative vote of the community board was adopted without a public hearing, without a quorum or at a meeting conducted after its 60-day period for review, such non-complying negative vote shall not serve the purpose of Charter §197-d(b)(2). The Commission may note the noncompliance and any other deficiency in compliance with this chapter in its report.

(b) **Waivers of hearings and recommendations.** (1) **Leases.** In the case of a proposed lease of property of the City which in the judgment of the community board does not involve a substantial land use interest, such board may waive the holding of a public hearing and preparation of a written recommendation. In such case the community board shall submit to the Department a written waiver of its right to hold a public hearing and to submit recommendations to the City Planning Commission and affected Borough President. When a written waiver of the community board's right to hold a hearing and submit a recommendation is received by the Department of City Planning the community board's period of review shall be deemed ended and the Borough President's time period begun.

(2) **Franchises.** In the case of Request for Proposal or other solicitation for a franchise which in the judgment of the community board does not involve a substantial land use interest, such community board may submit a written waiver to the Commission of the right to hold a public hearing and the preparation of a written recommendation.

(c) **Notice of hearing.** Notice of the time, place and subject of a public hearing to be held by a community board on an application shall be given as follows:

(1) by publication in The City Record for the five (5) days of publication immediately preceding and including the date of the public hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than five (5) calendar days prior to the date of public hearing;

(3) to the applicant ten (10) days prior to the date of hearing (with a copy of such notice also forwarded to the Department of City Planning);

(4) for all actions that result in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing;

(5) Community boards are also encouraged to publicize hearings by publication in local newspapers, posting notices in prominent locations, and other appropriate means.

(d) **Conduct of public hearing.** (1) **Location.** A community board public hearing shall be held at a convenient place of public assembly chosen by the board and located within its community district. If in the community board's judgment there is no suitable and convenient place within the community district, the hearing shall be held at a centrally located place of public assembly within the borough.*1

(2) **General character.** Hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. Only members of a community board and persons expressly authorized by the chairperson may question a speaker. All persons appearing and wishing to speak shall be given the opportunity to speak. A community board hearing shall be conducted in accordance with by-laws adopted by the community board.

(3) **Quorum.** A public hearing shall require a quorum of 20% of the appointed members of the community board, but in no event fewer than seven such members. The minutes of a meeting at which a public hearing was held shall include a record of the individual members present.

(4) **Record.** The record of a public hearing shall consist of but not be limited to a list of speaker's names and affiliations (if any), a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the application, and any exhibits or written statements offered by speakers.

(e) **Public attendance at meetings of a community board or its committees.** The public may attend all meetings of a community board or its committee at which an application for an action subject to this Chapter is to be considered or acted upon in a preliminary or final manner. A community board may close a meeting or committee meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

(f) **Recommendations and waivers.** (1) **Quorum.** The adoption of a community board recommendation, or the waiver of a public hearing and recommendation by a community board, shall require a quorum of a majority of the appointed members of the board. The minutes of a meeting at which a recommendation or waiver was adopted shall record the individual members present.

(2) **Vote.** The adoption of a community board recommendation or the waiver of a public hearing and recommendation shall be by a public vote which results in approval by a majority of the appointed members present during the presence of a quorum, at a duly called meeting. The vote shall be taken in accordance with the by-laws of the community board.

(3) **Content.** A community board recommendation shall be in writing on a form provided by the Department of City Planning and shall include a description of the application, the time and place of the public hearing on the application, the time and place of the meeting at which the recommendation was adopted and the vote by which the recommendation was adopted. The community board may include in its submission the reasons for the vote and any conditions attached to its vote. The community board may state that its conditional approval shall be considered a negative recommendation for purposes of Charter §197-d(b)(2) if conditions that it considers essential to minimize land use or environmental impacts are not adopted by the Commission. The City Planning Commission shall give consideration only to those conditions which are related to land use and environmental aspects of the application.

(4) **Submission.** A community board shall submit its recommendation or waiver promptly after adoption, to the Commission, to the Borough President, to the applicant and, in the case of an application referred to two or more community boards and a borough board, to such borough board. If a community board fails to act within the time limits for review the application shall be deemed referred to the next level of review at the completion of the community board's time period.

(g) **Requests for review of action not in a community district.** A community board or borough board may request a copy of the application and supporting documents for any action subject to ULURP which is not located within the district boundaries of the community board, or the borough board, making the request. The request must be made in writing to the Calendar Office of the Commission and it shall state the basis for the board's judgment that the application may significantly affect the welfare of the district or borough served by such board. If such request is made, the Department of City Planning shall forward the information described above to said board. Thereafter, the community board or borough board may schedule a public hearing on the application, such hearing and notice thereof to be in conformance with §§2-03(c), 2-03(d), 2-05(c) and 2-05(d) of this chapter and may submit a written recommendation to the Commission. The Commission may receive such recommendation at any time prior to its final action on the application; however, it shall have no authority to extend the review period defined in Charter §197-c, nor shall a review by a second community board pursuant to this subparagraph (g) require that the application be reviewed by the borough board. A Borough President may similarly request a copy of an application and supporting documents for any action subject to ULURP which is not located within the boundaries of the borough.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (e) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * This provision is not intended to affect the requirement of Charter §2800(h) stating a community board's obligation to meet at least monthly (except during July and August) within its district.

Rules of the City of New York

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

62 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-04 Borough President Actions.

A Borough President may submit a written recommendation on an application, or waive the right to submit a recommendation to the City Planning Commission. Such recommendation or waiver shall be submitted on the form provided not later than 30 days after the receipt of a recommendation or waiver by the City Planning Commission and the Borough President from an affected community board, by the latest to respond of all affected community boards or if any affected community board shall fail to act within the time period, thirty (30) days after the expiration of the time allowed for such community board(s) to act.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

62 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-05 Borough Board Actions.

(a) **General provisions.** Except as provided below in §2-05(b), an affected borough board may conduct a public hearing on an application and submit a written recommendation to the Commission. Such recommendation or waiver shall be submitted on the form provided not later than thirty (30) days after the filing of a recommendation or waiver with the Borough President by the last to respond of all affected community boards, or if any affected community board shall fail to act within the time period, thirty (30) days after the expiration of the time allowed for such community boards to act.

(b) **Notice of hearing.** Notice of the time, place and subject of a public hearing to be held by a borough board for all applications subject to this land use review procedure shall be given as follows:

(1) by publication in The City Record for the five (5) days of publication immediately preceding and including the date of the public hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than five (5) calendar days prior to the date of hearing;

(3) to the applicant ten (10) days prior to the date of hearing;

(4) for all actions resulting in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An

affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing.

(c) **Conduct of hearing.** (1) **Location.** A borough board public hearing shall be held at a convenient place of public assembly chosen by the board and located within the borough.

(2) **General character.** Hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. Only members of a borough board or persons expressly authorized by the chairperson may question a speaker. All persons appearing and wishing to speak shall be given the opportunity to speak. A borough board's hearing shall be conducted in accordance with by-laws adopted by such borough board.

(3) **Quorum.** A public hearing shall require a quorum of a majority of the borough board's members who are entitled to vote on the application in question. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the comunity district represented by such members. The minutes of the meeting at which a public hearing was held shall record the individual members present.

(4) **Record.** The record of a public hearing shall consist of a list of speakers' names and affiliations if any, a notation of each speaker's own indication, on a form provided for that purpose, of support or opposition to the application and any exhibits or written statements offered by speakers.

(d) **Public attendance at meetings.** The public may attend all meetings of a borough board at which an application for an action subject to this Chapter is to be considered or acted upon in a preliminary or final manner. A borough board may close a meeting to the public only as provided in the New York State Open Meetings Law (Public Officers Law, §§100-111).

(e) **Recommendations and waivers.** (1) **Quorum.** The adoption of a borough board recommendation or the waiver of a public hearing and recommendation by a borough board shall require a quorum of a majority of the borough board's members entitled to vote on the application in question. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the community district represented by such member. The minutes of a meeting at which a recommendation or waiver was adopted shall record the individual members present.

(2) **Vote.** Adoption of a recommendation shall be by a public roll call vote which results in approval by a majority of the members entitled to vote on the application in question present during the presence of a quorum, at a duly called meeting. Pursuant to Charter §85, community board members of the borough board may only vote on issues that directly affect the community district represented by such member.

(3) **Content.** A borough board recommendation shall be in writing on a form provided by the Department of City Planning and shall include a description of the application, the time and place of public hearing, the time and place of the meeting at which the recommendation was adopted and the votes of individual borough board members. The borough board may include in its submission the reasons for its vote and any conditions to the vote.

(4) **Submission.** A borough board shall submit its recommendation or waiver on the form promptly after adoption to the Commission and to the applicant.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (d) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Rules of the City of New York

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

62 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-06 City Planning Commission Actions.

(a) **General provisions.** The Commission shall hold a public hearing on all applications made pursuant to §197-c of the Charter not later than sixty (60) calendar days after the expiration of the time allowed for the filing of a recommendation or waiver with it by an affected Borough President. Following its hearing and within its applicable sixty (60) day period, the Commission shall approve, approve with modifications or disapprove such application and file its decision pursuant to §2-05(h)(4) below.

(b) **Zoning text amendments pursuant to Charter §200 or §201.** The Commission shall hold a public hearing on an application for a zoning text amendment pursuant to Charter §200 or §201. Such hearing shall be conducted in accordance with §2-06(f) of this Chapter.

(c) **Modification of application.** (1) The Commission may propose a modification of an application, including an application for a zoning text amendment pursuant to Charter §200 or §201, which meets the criteria of §2-06(g) below. Such proposed modification may be based upon a recommendation from an applicant, community board, borough board, Borough President or other source. Where a modification is proposed, the Commission shall hold a public hearing on the application as referred to a community board or boards and on the proposed modification. Promptly upon its decision to schedule a proposed modification for public hearing, the Commission shall refer the proposed modification to the community board or community boards, borough board, and the affected Borough President to which the application was earlier referred, for such action as such board or boards or Borough President deem appropriate.

(2) The above provision shall not limit the Commission's ability to make a minor modification of an application.

(d) **Notice of hearing.** Notice of the time, place and subject of a public hearing by the Commission for all applications subject to this uniform land use review procedure, including applications for zoning text amendments pursuant to Charter §200 and §201 and modified applications pursuant to §2-06(c)(1), of this chapter, shall be given as follows:

(1) by publication in The City Record beginning not less than ten (10) calendar days immediately prior to the date of hearing and continuing until the day prior to the hearing;

(2) by publication in the Comprehensive City Planning Calendar distributed not less than ten (10) calendar days prior to the date of hearing;

(3) by mailing notice to the concerned community board or community boards Borough President and borough board and to the applicant not less than ten (10) calendar days prior to the date of hearing;

(4) for all actions that result in acquisition of property by the City, other than by lease, whether by condemnation or otherwise, the applicant shall notify the owner or owners of the property in question by mail to the last known address of such owner or owners, as shown on the City's tax records, not later than five (5) days prior to the date of hearing. An affidavit attesting to the mailing and a copy of the notice shall be submitted to the Department of City Planning prior to the Commission's public hearing.

(e) **Posting of notices for hearings on the disposition of occupied city-owned residential buildings.** For any application involving disposition of a city-owned residential building, which at the time of application is occupied by tenants, the applicant shall post notice of the Commission public hearing in the manner discussed below:

(1) at least eight (8) days prior to the Commission public hearing a notice, on a form provided by the Department of City Planning, shall be posted by the applicant in the building subject to the application, informing the tenants of the proposed action and the right of the public to appear at the Commission hearing and testify; and

(2) such notice shall be posted in common public space on the ground floor of the building accessible to all building tenants; and

(3) the applicant will file with the Department of City Planning an affidavit attesting to the posting of the notice and date and specific location where the notice was posted. The affidavit shall be signed by the person posting the notice.

(f) **Conduct of hearing.** (1) **Location.** Commission public hearings shall be held in City Hall, unless otherwise ordered by the Chair.

(2) **General Character.** Hearings shall be legislative type hearings, without sworn testimony, strict rules of evidence or opportunity for speakers to cross-examine one another. Only members of the Commission may question a speaker (except at a joint Commission/CEQR hearing at which officers of the lead agency and the office of Environmental Coordination may also ask questions). All persons filling out an appearance form shall be given the opportunity to speak. The chairperson may prescribe a uniform limited time for each speaker.

(3) **Quorum.** A public hearing shall require a quorum of a majority of the members of the Commission.

(g) **Commission actions.** (1) **Scope of action.** The Commission shall approve, approve with modifications or disapprove each application.

(2) **Vote.** The Commission shall act by the affirmative roll call vote of at least seven (7) members at a public meeting, except that pursuant to Charter §197-c, subsection h, approval or approval with modifications of an application relating to a new city facility for site selection for capital projects, the sale, lease (other than the lease of office space),

exchange or other disposition of the real property of the City, including sale or lease of land under water pursuant to §1602, Chapter 15 of the Charter or other applicable provisions of law; or acquisitions by the City of real property (other than the acquisition of office space for office use or a building for office use), including acquisition by purchase, condemnation, exchange or lease and including the acquisition of land under water pursuant to §1602, Chapter 15 and other applicable provisions of law, shall require the affirmative vote of nine members of the Commission if the affected Borough President:

(i) recommends against approval of such application pursuant to subdivision g of Charter §197-c; and

(ii) has proposed an alternative location in the same borough for such new facility pursuant to subdivision f or g of Charter §204.

(3) **Commission report.** A report of the Commission shall be written with respect to each application subject to this procedure on which a vote has been taken. The report shall include:

(i) a description of the certified application;

(ii) a summary of testimony at all Commission public hearings held on the application;

(iii) a copy of all community board, Borough President or borough board written recommendations concerning the application;

(iv) the consideration leading to the Commission's action, including reasons for approval and any modification of the application and reasons for rejection by the Commission of community board, Borough President or borough board recommendations;

(v) any findings and consideration with respect to environmental impacts as required by the State Environmental Quality Review Act and regulations;

(vi) the action of the Commission, including any modification of the application;

(vii) the votes of individual Commissioners;

(viii) any dissenting opinions.

(4) **Filing of decisions of the Commission.** The City Planning Commission shall file copies of its decision with the affected Borough President and with the City Council. All filings with the Council shall include all associated community board, Borough President or borough board recommendations. The Commission shall mail a copy of any decision to the applicant and to the community board or community boards, and borough board to which the application was referred. Filings with the City Council and Borough President shall be completed within the Commission's sixty (60) day time period.

(5) **Review of Council modifications.** The Commission shall receive from the City Council during its fifty (50) day period for review copies of the text of any proposed modification to the Commission's prior approval of an action. Upon receipt the Commission shall have fifteen (15) days to review and to determine:

(i) in consultation with the Office of Environmental Coordination and lead agency as necessary, whether the modification may result in any significant adverse environmental effects which were not previously addressed; and

(ii) whether the modification requires the initiation of a new application. In making this determination, the Commission shall consider whether the proposed modification:

(A) increases the height, bulk, envelope or floor area of any building or buildings, decreases open space, or alters

conditions or major elements of a site plan in actions (such as a zoning special permit) which require the approval or limitation of these elements;

(B) increases the lot size or geographic area to be covered by the action;

(C) makes necessary additional waivers, permits, approvals, authorizations or certifications under sections of the Zoning Resolution, or other laws or regulations not previously acted upon in the application; or

(D) adds new regulations or deletes or reduces existing regulations or zoning restrictions that were not part of the subject matter of the earlier hearings at the community board or Commission.

If the Commission has determined that no additional review is necessary and that, either, no significant environmental impacts will result or that possible environmental impacts can be addressed in the time remaining for Commission and Council review, it shall so report to the Council. The Commission may also transmit any comment or recommendation with respect to the substance of the modification, and any proposed further amendment to the modification which it deems as necessary or appropriate.

If the Commission has determined that the proposed modification will require a supplementary environmental review or the initiation of a new application, it shall so advise the Council in a written statement which includes the reasons for its determination.

(6) **Zoning Resolution text amendments pursuant to Charter §§200 and 201.** Applications for amendments to the text of the Zoning Resolution pursuant to Charter §200 or §201 shall be subject to the provisions of this paragraph (g).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (b) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (c) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (d) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) relettered (formerly (g)) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) par (1) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (f) par (4) repealed City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) relettered (formerly (h)) City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) subpar (i) amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) subpar (ii) open par amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (5) final paragraph amended City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Subd. (g) par (6) added City Record Nov. 10, 1997 eff. Dec. 10, 1997. [See T62 §1-01 Note 1]

Rules of the City of New York

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

62 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-07 Borough President Initiation of City Council Review.

In the case of an application not subject to mandatory council review pursuant to Charter §197-d(b)(1), which receives an unfavorable recommendation by both an affected community board and affected Borough President and either a favorable vote or favorable vote with modification by the Commission, such application shall be subject to council review and action if the affected Borough President shall file, within five (5) days of receiving the report of the Commission, a written objection to the Commission's vote with the Council and the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

15 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-08 Board of Standards and Appeals.

(a) **Variance and special permit applications.** (1) **Filing and referral.** An application for a variance of the Zoning Resolution or for a special permit which under the Zoning Resolution is within the jurisdiction of the Board of Standards and Appeals shall be filed with the Board of Standards and Appeals. In accordance with the rules of Practice and Procedures [Chapter 1 of the Board of Standards and Appeals rules], the Board of Standards and Appeals shall refer the application to the community board within which district the site is located or, in the case of an application involving a site located within two or more community districts, to the community boards for such districts and to the borough board for the appropriate borough. The Commission, as a party to a proceeding to vary the Zoning Resolution, shall be served with all papers in such proceeding by the Board of Standards and Appeals. Upon the filing with a community board, or with two or more community boards and a borough board, of an application for a variance or a special permit under the jurisdiction of the Board of Standards and Appeals, such community board or community boards and borough board shall review such application pursuant to §§2-03 and 2-05 herein.

(2) **Community board waiver or recommendation.** In the case of an application to vary the Zoning Resolution or for a special permit under the jurisdiction of the Board of Standards and Appeals, a community board may waive in writing the holding of a public hearing and the adoption of a written recommendation. The community board recommendation or waiver shall be referred to the Board of Standards and Appeals, the Commission and, in the case of an application which was referred to two or more community boards and a borough board, to such borough board. Upon action by or expiration of time to act on an application for each concerned community board and when appropriate, action by or expiration of time to act for an affected borough board, the Board of Standards and Appeals may proceed to review the application and to make a decision.

(3) **Borough board review.** In the case of an application to vary the Zoning Resolution or for a special permit pursuant to the Zoning Resolution under the jurisdiction of the Board of Standards and Appeals, a borough board may waive in writing the holding of a public hearing and the adoption of a written recommendation. After action by or expiration of time to act for all affected community boards if subject to borough board review, and upon receipt of a waiver or recommendation from a borough board or expiration of the thirty (30) day time limit for borough board review, the Board of Standards and Appeals may proceed to review the application and to make a decision.

(b) **City Planning Commission review.** Appearance in Variance Proceeding- In the case of an application to the Board of Standards and Appeals for a variance of the Zoning Resolution, the Commission may appear before the Board of Standards and Appeals and be heard as a party in the variance proceeding if, in the Commission's judgment, granting the relief requested in such application would violate the requirements of the Zoning Resolution which relate to the granting of variances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

16 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-09 Administrative Provisions.

(a) **Referrals and filings.** Unless otherwise provided herein, any referrals and filings required under this chapter shall be made by hand delivery or first class mail as follows:

(1) if to the Commission, then to the Land Use Review Division, Department of City Planning, Room 2E, 22 Reade Street, New York, New York 10007-1216;

(2) if to a community board, then to the chairperson of such community board at its office or, if there is no office or if no office address is provided to the Land Use Review Division, Department of City Planning, then to such board c/o the Borough President of the borough in question;

(3) if to a borough board, then to such borough board c/o the Borough President of the borough in question;

(4) if to the Board of Standards and Appeals, then to the Secretary of the Board of Standards and Appeals, 11th Floor, 161 Avenue of the Americas, New York, New York 10013;

(5) if to the City Council then to the Office of the Speaker City Council, City Hall, New York, New York.

(b) **Time provisions.** (1) **Expiration dates**. Where the expiration of a time period set forth herein falls on a Saturday, Sunday or legal holiday, the expiration date shall be deemed extended until the next working day.

(2) **Determination.** All time periods specified in these regulations shall be calendar days. The commencement and end of time periods shall be recorded and officially calculated and determined by the Director of City Planning.

(c) **Transition.** Any application which has been voted upon by the community board and borough board, if required, and the recommendation concerning which has been received by the Department of City Planning prior to May 2, 1990 shall not be subject to these provisions, but shall rather be subject to the procedures in effect prior to May 2, 1990, which procedures shall remain in effect for that category of actions until June 30, 1990. In accordance with §1152d(6)(b) of the Charter the time period for receiving any application referred to a Borough President in the month of May, 1990 shall be extended until June 30, 1990, at which time it shall be transmitted to the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

17 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 2 UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

§2-10 Interpretation and Amendment of Regulations.

(a) **Interpretation.** This chapter shall be interpreted in accordance with the ordinary meaning of the language herein, and any ambiguities arising herefrom shall be referred to and definitively interpreted in written opinions by the Director of City Planning.

(b) **Amendments.** The Commission from time to time may amend these regulations, in accordance with the City Administrative Procedure Act, Chapter 45 of the Charter.

(c) **Commission Rules of Procedure.** These regulations shall supplement and, where there is inconsistency, supersede the rules of Practice and Procedure of the City Planning Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

62 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER A CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) (DEPARTMENT OF CITY PLANNING AND DEPARTMENT OF ENVIRONMENTAL PROTECTION)

§3-01 Fee for CEQR Applications.

Except as specifically provided in this section, every application made pursuant to Executive Order 91 and Chapter 5 of these rules shall include a non-refundable fee which shall be submitted to the lead agency for the action or to an agency that could be the lead agency pursuant to §5-03 of the rules of the Commission, and shall be in the form of a check or money order made out to the "City of New York". The fee for an application shall be as prescribed in the following Schedule of Charges, §3-02 of these rules. The fee for modification for an action, which modification is not subject to §197-c of the New York City Charter shall be twenty percent of the amount prescribed in the Schedule of Charges for an initial application. The fee for any modification for an action, which is subject to §197-c of the New York City Charter shall be the amount set forth in the Schedule of Charges (§3-02) as if the modification were an initial application for the action. Where the fee for an application is set pursuant to §3-02(a), and the square footage of the proposed modification is different from the square footage of the original action, the fee for an application for the modification shall be based upon the square footage of the modified action or as set forth in §3-02(b), as determined by the lead agency.

Agencies of the federal, state or city governments shall not be required to pay fees, nor shall a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis be required to pay fees, if the proposed action for purposes of CEQR review consists of a zoning map amendment for an area of at least two blocks in size, in which one or more of its members or constituents reside. Fees shall be paid when

the application is filed, and these fees may not be combined in one check or money order with fees required pursuant to other land use applications submitted to the Department of City Planning or the City Planning Commission. No application shall be processed by the lead agency until the fee has been paid and twenty-five copies of the application have been filed with the lead agency.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §1, eff. Aug. 9, 2009. [See Note 4]

Section amended City Record May 29, 2007 §2, eff. June 28, 2007. [See Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note 1]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 2002:

The proposed Amendment to the City Planning Commission's Rule would modify the existing Fee Schedule for filing applications pursuant to CEQR in order to reflect the cumulative rate of inflation and the increased cost of professional staff time in reviewing applications since the fees were last increased in 1995.

2. Statement of Basis and Purpose in City Record June 28, 1995: The proposed Amendment to the City Planning Commission Rule governing fees charged for filing CEQR applications would modify the existing Schedule of Charges in order to cover the City's increased costs associated with the CEQR process. The rule also makes a clarifying change to §5-08.

3. Statement of Basis and Purpose in City Record May 29, 2007: The City Planning Commission is amending its rules pursuant to its authority under §§192 and 1043 of the New York City Charter. Amendments to Chapter 3 of Title 62 of the Rules of the City of New York increase fees for City Environmental Quality (CEQR) review by 15% to reflect cost of living increases and increased labor costs, except that for Type II applications the current fee of $75 will be increased by 33%. The amendments also increase fees for the processing and review of most land use applications by 40% in order to reflect agency costs of processing and review. The CEQR fee increase is less than the land use application fee increase current because CEQR fees capture more of the current costs. The CEQR fee increase will also increase fees for such review by the Board of Standards and Appeals. Fees for non-profit organizations will no longer be waived. Exceptions will be made for neighborhood, community or similar associations consisting of local residents or homeowners organized on a non-profit basis filing area-wide rezoning applications. The fee for an application which requests a modification of a previously approved application, where the new application is not subject to §197-c of the New York City Charter, will be increased from one-quarter of the current fee for an initial application to one-half of such fee. Payment of a fee will be required for the Department's issuance of written zoning verifications, a service for which no fee has previously been charged. A fee for certification for public school space pursuant to §107-123 of Article X, Chapter 7 (Special South Richmond Development District) of the Zoning Resolution, which was previously erroneously deleted from the §3-07, has been reinserted. In addition to the changes described above, §3-07 has been reorganized for clarity and ease of use. Complex language is simplified, and outdated provisions are eliminated.

4. Statement of Basis and Purpose in City Record July 10, 2009: The City Planning Commission is amending its rules pursuant to its authority under Sections 192 and 1043 of the New York City Charter. Amendments to Chapter 3 of Title 62 of the Rules of the City of New York would increase fees for the processing and review of City Environmental Quality Review (CEQR) applications and of land use applications by 8% to reflect increased labor costs. Supplemental

land use application fees would be established for large projects of over of 500,000 square feet of floor area. A supplemental CEQR fee would also be required for projects for which a restrictive declaration to ensure compliance with project components related to the environment and/or mitigation of significant adverse impacts will be executed. The supplemental fees would capture the costs of the additional work that is required of Department staff in connection with large projects, and projects for which a restrictive declaration to ensure compliance with project components related to the environment and mitigation measures will be executed. In addition to the changes described above, Section 3-07 of the land use fee rule has been clarified to establish that for certain authorizations, the fee for a project with non-residential uses is the same as the fee for a project with open uses. The lower fee for certain residential uses is not applicable if the project also contains a commercial or community facility use.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

19 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER A CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) (DEPARTMENT OF CITY PLANNING AND DEPARTMENT OF ENVIRONMENTAL PROTECTION)

§3-02 Schedule of Charges.

(a) Projects measurable in square feet

[See tabular material in printed version]

(c) Supplemental Fee for Environmental Mitigation.

In addition to all other applicable fees as set forth above, a supplemental fee of $8,000 shall be required for CEQR applications filed on or after July 1, 2009, for which a restrictive declaration to ensure compliance with project components related to the environment and/or mitigation of significant adverse impacts will be executed.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §2, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §3, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note after T62 §3-01]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-01 Note 2]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

Rules of the City of New York

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

62 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-06 Fees for Applications Pursuant to City Charter §197-c and Other Appli- cations.

Except as specifically provided in this section, every type of application listed in Section 3.07, Schedule of Charges, shall include a non-returnable fee which shall be paid by check or money order made out to the City of New York.

The fee for an initial application, or for a modification, renewal or follow-up action, shall be as prescribed in the following Schedule of Charges, provided that if an applicant simultaneously submits applications for several actions relating to the same project, the maximum fee imposed shall be two hundred percent of the single highest fee, provided that such maximum fee limitation shall not apply to supplemental fees. An additional fee shall be charged for any applications later filed in relation to the same project, while such project is pending review and determination.

Agencies of the federal, state or city governments shall not be required to pay fees nor shall any fees be charged if a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis applies for a zoning map amendment for an area of at least two blocks in size, in which one or more of its members or constituents reside.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §3, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §4, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. [See Note 1]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See Note 2]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 2002:

The proposed Amendment to the City Planning Commission's Rule would modify the existing Fee Schedule for filing applications pursuant to §197-c of the New York City Charter and other applications in order to reflect the cumulative rate of inflation and the increased cost of professional staff time in reviewing applications since the fees were last increased in 1995.

2. Statement of Basis and Purpose in City Record June 28, 1995: The proposed Amendment to the City Planning Commission's Rule would modify the existing fee Schedule for filing applications pursuant to §197-c of the New York City Charter and other applications in order to cover the City's increased costs associated with such filings.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

21 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-07 Schedule of Charges.

(a) **Applications for Special Permits and Zoning Map amendments pursuant to §197-c of the City Charter:**

(1) Applications for special permits:

[See tabular material in printed version]

[See tabular material in printed version]

(b)

Applications for changes to the City Map, Landfills:

Except for applications to eliminate a mapped but unimproved street from the property of an owner-occupied, one- or two-family residence, for which no fee shall be charged, fees are as follows:

Elimination of a mapped but unimproved street

$1,740

Establishment of a landfill

$3,400

Any other change in the City Map

$5,445

(c) **Applications for franchises and revocable consents:**

(1) Applications pursuant to §197-c of the City Charter-$3,400

(2) Enclosed sidewalk cafes pursuant to New York City Administrative Code §20-225: $55 per seat/minimum of $1,360

(d) Applications for amendments to the text of the Zoning Resolution pursuant to §201 of the City Charter $5,445

(e) **Applications for zoning certifications and zoning authorizations:**

(1) For certification for public school space pursuant to §107-123 of Article X, Chapter 7 (Special South Richmond Development District) of the Zoning Resolution, the fee shall be $160.

(2) Pursuant to Article VI, Chapter 2 (Special Regulations Applying in The Waterfront Area), Article X, Chapter 5 (Natural Area District), Article X, Chapter 7 (Special South Richmond Development District) and Article XI, Chapter 9 (Special Hillsides Preservation District) of the Zoning Resolution.

Certifications

For an application for one zoning lot with no more than two existing or proposed dwelling units-$380

For all other applications the fee for each zoning lot shall be $430.

Authorizations

For an application for one zoning lot with no more than two existing or proposed dwelling units and no commercial or community facility use-$755

For all other applications with no commerical or community facility use, the fee shall be based upon the number of dwelling units being proposed, in the amount of $830 per dwelling unit, however, in cases of open uses, the fee shall be based upon the area of the zoning lot, and in cases of community facility or commercial uses, the fee shall be based upon the total amount of floor area, as follows:

Less than 10,000 square feet

$1,060

10,000 to 19,999 square feet

$1,590

20,000 to 39,999 square feet

$2,040

40,000 to 69,999 square feet

$2,645

70,000 to 99,999 square feet

$3,100

100,000 square feet and over

$3,400

(3) Pursuant to §95-04 (Transit Easements) of the Zoning Resolution-$ 270

(4) Pursuant to all other sections of the Zoning Resolution:

Total amount of floor area, or in the cases of open uses, area of the zoning lot as follows:

Less than 10,000 square feet

$1,060

10,000 to 19,999 square feet

$1,590

20,000 to 39,999 square feet

$2,040

40,000 to 69,999 square feet

$2,645

70,000 to 99,999 square feet

$3,100

100,000 square feet and over

$3,400

In the case of area transfer of development rights or floor area bonus, the fee shall be based upon the amount of floor area associated with such transfer or bonus.

(f) **Modifications, follow-up actions and renewals.**

(1) The fee for an application which requests a modification of a previously approved application, where the new application is subject to §197-c of the New York City Charter, shall be the same as the current fee for an initial application, as set forth in this Schedule of Charges.

(2) The fee for an application which requests a modification of a previously approved application, where the new application is not subject to §197-c of the New York City Charter, shall be one-half of the current fee for an initial application, as set forth in this Schedule of Charges.

(3) The fee for a follow up action under the Zoning Resolution, or a restrictive declaration or other legal instrument shall be one-quarter of the amount prescribed in this Schedule of Charges for an initial application.

(4) The fee for the renewal of a previously approved enclosed sidewalk cafe shall be one-half of the amount prescribed in this Schedule of Charges for an initial application.

(5) The fee for the renewal pursuant to §11-43 of the Zoning Resolution of a previously approved special permit or authorization which has not lapsed shall be one-half of the amount prescribed in this Schedule of Charges for an initial application.

(g) Supplemental Fee for Large Projects.

In addition to all applicable fees as set forth above, a supplemental fee shall be required for the following applications:

Applications that may result in the development of 500,000 to 999,999 square feet of floor area $ 80,000

Applications that may result in the development of 1,000,000 to 2,499,000 square feet of floor area $120,000

Applications that may result in the development of at least 2,500,000 square feet of floor area $160,000

HISTORICAL NOTE

Section amended City Record July 10, 2009 §4, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section amended City Record May 29, 2007 §5, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section amended City Record Oct. 7, 2002 eff. Nov. 6, 2002. This amendment relettered several subdivisions. [See Note 1 after §3-06]

Section amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-06 Note 2]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

22 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-08 Natural Feature Restoration Fee.

In the event that an application, pursuant to §§105-45, 107-321, 107-65, and 119-40 of the Zoning Resolution, for the restoration of trees that have been removed or topography that has been altered without the prior approval of the City Planning Commission pursuant to §§105-40, 107-60, 119-10, 119-20, or 119-30 of the Zoning Resolution is filed, the fee for such application shall be $.10 per square foot, based upon the total area of the zoning lot, but in no case to exceed $18,900.00.

This section shall not apply to developments for which zoning applications have been approved by the City Planning Commission prior to January 6, 1983 and for which an application for a building permit has been filed prior to January 6, 1983.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §5, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section added City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

DERIVATION

Formerly T62 §1-04

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

Rules of the City of New York

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

62 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER B UNIFORM LAND USE REVIEW (ULURP)

§3-09 Fee for Zoning Verification.

The fee for a request that the Department of City Planning verify in writing the zoning district(s) in which a property is located shall be $110 per request. Each zoning verification request shall be made in writing, and shall include the address, borough, tax block and lot(s) of the property. Each separate property shall be a separate request; however, a property comprised of multiple contiguous tax lots shall be treated as a single request.

HISTORICAL NOTE

Section amended City Record July 10, 2009 §5, eff. Aug. 9, 2009. [See T62 §3-01 Note 4]

Section added City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

24 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 3 FEES AND CONTRIBUTIONS*1

SUBCHAPTER C CONTRIBUTIONS*2

§3-10 Contributions to Theater Subdistrict Fund Pursuant to §81-744 of the New York City Zoning Resolution.

Contributions to the Theater Subdistrict Fund pursuant to §81-744 of the New York City Zoning Resolution shall be made in an amount equal to $14.91 per square foot of floor area transferred.

HISTORICAL NOTE

Section renumbered (former §3-08) City Record May 29, 2007 §6, eff. June 28, 2007. [See T62 §3-01 Note 3]

Section added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See Subchapter C footnote]

2

[Footnote 2]: * Subchapter C added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. Note Statement of Basis and Purpose: These rules are promulgated pursuant to the authority of the City Planning Commission, under §§192 and 1043 of the New York City Charter, and pursuant to §81-744(a)(5) of the New York City Zoning Resolution. Under §81-744 of the Zoning Resolution, the City Planning Commission shall allow by certification or authorization the transfer of development rights from listed theaters in the Theater Subdistrict. Certification shall be granted, provided that, among other requirements, the appropriate legal documents are executed ensuring that a contribution in an amount, which is presently established under §81-744(a)(5) to be $10.00 per square foot of transferred floor area, is deposited in the Theater Subdistrict Fund. The City Planning Commission is required to periodically review the contribution amount and to adjust such amount to reflect any change in the assessed value of all properties on zoning lots wholly within the Theater Subdistrict.

In adopting §81-744 of the Zoning Resolution, City Planning Commission Report N980271ZRM, dated June 3, 1998 (the "Report"), established the original contribution amount at $10 per square foot, which was described as approximately twenty (20) percent of the value of land per square foot in the Theater Subdistrict. The Report further stated that this amount should be adjusted periodically based on changes in the assessed value of land in the district.

Consistent with the §81-744 and the 1998 Report, the proposed adjustment reflects the adjusted value of land per square foot for properties on zoning lots wholly within the Theater Subdistrict, taking into account changes in the assessed valuation since 1998.

There are three blocks west of Eighth Avenue which are bisected by the Theater Subdistrict boundary. Using zoning lot merger information for these blocks from 1998 to 2006, it was determined which of the zoning lots in these blocks are situated fully within the Theater Subdistrict. Based upon the assessed property values for the property included within these zoning lots, provided by the New York City Department of Finance ("DOF"), it has been determined that the assessed value for all properties situated wholly within the Theater Subdistrict has increased 49.06% per square foot from 1998 to 2006.

DOF data shows that in 1998, the total built floor area of the Theater Subdistrict was 63,871,931 square feet, and the total assessed value of such properties was $4,525,059,822. DOF data also show that in 2006, the total built floor area of the Theater Subdistrict was 81,642,687 square feet, and the total assessed value of such properties was $8,621,852,552.

Based upon the DOF data, the total assessed value per square foot was $70.85 in 1998 and was $105.60 in 2006. Given that the assessed value of all properties per square foot increased $34.76 or 49.06% from 1998 until 2006, the proposed rule would increase the required Theater Subdistrict Fund contribution from $10.00 per square foot to $14.91 per square foot of development rights transferred from the listed theaters.

25 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 4 CITY COASTAL COMMISSION PROCEDURES

§4-01 Procedures for Waterfront Revitalization Program Consistency Review of Local, State and Federal Actions.

(a) The review of waterfront-related actions by the CPC in its role as the City Coastal Commission (CCC) and by DCP is divided into two separate categories:

(1) local projects brought to the CPC via ULURP or 197-a or to the Department of City Planning via CEQR and BSA, and

(2) federal and state actions which are subject to WRP consistency review but not to any other local review processes.

(b) **Local actions.** Local actions subject to CEQR, ULURP or other CPC processes are reviewed for consistency by DCP staff (Waterfront and Open Space Division). In order to implement the CCC's mandate to review projects for consistency with WRP policies, WRP consistency, is incorporated into the CPC's review of actions and into its reports to the Board of Estimate (BOE). Within this framework, the CPC must hold a public hearing and approve, approve with modifications or disapprove the action. A recommendation is then forwarded to the Board of Estimate in the CPC's report. The reports will state that the CPC has determined, as CCC, the consistency with the WRP. For BSA actions subject to CEQR, WRP consistency is incorporated within the CEQR review.

(c) **Procedures.** All local WRP actions brought before the CPC through the ULURP or 197-a review process will follow the existing procedures established for these projects. In evaluating the project's effect on the city's waterfront, the City Coastal Commission will consider the policies set forth in the Waterfront Revitalization Program.

Where a ULURP or 197-a project is approved by the Commission, and the project has been found consistent with the policies and intent of the WRP, language will be added to the CPC report to the effect that: "The City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies."

Where the Commission approves a project which does not conform to existing waterfront policy, the report must reflect a CCC decision that that action has satisfied all four of the requirements set forth below:

(1) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;

(2) the action taken will minimize all adverse effects on such policies to the maximum extent practicable;

(3) the action will advance one or more of the other coastal policies; and

(4) the action will result in an overriding local or regional public benefit.

No special public notice requirements exist under WRP; these projects will be noticed pursuant to existing ULURP and 197-a procedures for public notice.

(d) **Federal and state actions.** The CPC, acting as the CCC, will review only certain federal and state actions-those that exceed one or more of the designated thresholds. The Waterfront and Open Space Division will review all others.

These thresholds are:

(1) actions that require the balancing of several different policies;

(2) actions that are significantly inconsistent with waterfront policies;

(3) actions that require a federal or state EIS; or

(4) actions that require policy interpretation.

The Waterfront and Open Space Division, as the coordinator of consistency review for federal and state actions, will ascertain which actions require consideration by the CCC.

(e) **Procedures.** Projects that do not exceed the thresholds by the Waterfront and Open Space Division.

A determination of consistency or inconsistency by the CCC or the Division will be forwarded to the affected agency within 30 days of receipt of the proposed project. When insufficient information is received, the Waterfront and Open Space Division will make a request of the applicant for additional information to ensure compliance with WRP regulations. The Division will notify the affected agency that until such information has been received and reviewed, the project is presumed inconsistent with WRP.

The Division will coordinate the intra- and interagency review of those actions that exceed the designated thresholds, acting as lead for WRP purposes throughout the review process. The projects will be reviewed prior to CCC consideration to finalize agency-wide coordination.

CCC consistency review of federal and state actions, whether by the Department or the CCC, does not require a public hearing or any public review. Public participation in these federal and state actions is coordinated by the permitting state or federal agency.

Findings of the CCC will be transmitted to the permitting agency by the Waterfront and Open Space Division. If the CCC determines that the action is consistent with the policies and intent of the WRP, then a letter to the appropriate state or federal agency would state that: "The City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies."

However, if the CCC determines that the project will hinder the achievement of the WRP, a letter from the CCC will be sent to the project applicant and the permitting agency, stating whether the action has satisfied the following requirements:

(1) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy;

(2) the action taken will minimize all adverse effects on such policies to the maximum extent practicable;

(3) the action will advance one or more of the other coastal policies; and

(4) the action will result in an overriding local public benefit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

62 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-01 Source of Authority and Statement of Purpose.

Section 192(e) of the Charter provides that the City Planning Commission "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." These rules are intended to exercise that mandate by redefining lead agencies within the city in accordance with law, prescribing the relationship of the new Office of Environmental Coordination with those agencies and regulating scoping. The organization and numbering of the various sections of these rules are not intended to correspond precisely to Executive Order 91. [43 RCNY Chapter 6, also, see Appendix A hereto]. Rather, these rules are an overlay on Executive Order 91. Where these rules conflict with Executive Order 91, these rules supersede the Executive Order.

In deciding upon the appropriate lead agency for certain classes of actions taken by the city, the City Planning Commission has selected the involved agency "principally responsible for carrying out, funding or approving" those actions. 6 NYCRR §617.2(v). For private ULURP applications, for §197-a plans and for all actions primarily involving a zoning map or text change, the City Planning Commission, responsible under the Charter "for the conduct of planning relating to the orderly growth, improvement and future development of the city" (Charter §192(d)), is the lead agency. For other ULURP applications, the city agency applicant, the agency that will generally be involved with ensuring programmatic implementation of the action, is the lead agency. Most of the remaining lead agency designations in the rules similarly address other approvals required by the Charter by designating the agency charged with ensuring programmatic implementation as the lead agency for those approvals. In appropriate cases, a lead agency designated by the rules may transfer its lead agency status to another involved agency.

The rules ensure that lead agencies have access to the technical and administrative expertise of the Office of

Environmental Coordination. Finally, the rules provide for involved and interested agencies, including the City Council, to participate in the environmental review process, and ensure a role for the public in scoping.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

CASE NOTES

¶ 1. Naumberg Bandshell in Central Park has been designated a scenic landmark as well as a national historic landmark and the demolition of the bandshell is subject to various approval procedures including review under the City Environmental Quality Review (CEQR) regulations (62 RCNY 5-01 et seq.) Matter of London v. Art Comm., 190 AD2d 557 [1993].

Rules of the City of New York

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

62 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-02 General Provisions.

(a) **Continuation of Executive Order No. 91 [43 RCNY §6-01 et. seq.] [See Appendix A to these rules].** Until the City Planning Commission promulgates further rules governing environmental review of actions taken by the city, Executive Order No. 91 of August 24, 1977, as amended (Executive Order 91), shall continue to govern environmental quality review in the city except where inconsistent with these rules, provided, however, that the following provisions of Executive Order 91 shall not apply: the definitions of "Agency", "Lead Agencies" and "Project data statement" defined in §6-02, subdivision (b) of §6-03, subdivision (a) of §6-05, the introductory paragraph of subdivision (b) of §6-05, paragraphs one and two of subdivision (a) of §6-12, §6-14, and subdivision (b) of the TYPE II part of §6-15.

(b) **Rules of Construction.** (1) All functions required by Executive Order 91 to be performed by the "lead agencies," as formerly defined in §6-02 of such Executive Order, shall be performed by the lead agency prescribed by or selected pursuant to these rules or by the Office of Environmental Coordination where authorized by these rules.

(2) Wherever Executive Order 91 explicitly or by implication refers to subdivision (b) of the Type II part of §6-15 of such Executive Order, such reference shall be deemed to be to §617.13(d) of the SEQRA Regulations.

(3) The reference to "a determination pursuant to §6-03(b) of this Executive Order" contained in Executive Order 91 §6-05(b)(1) shall be deemed to refer to selection of a lead agency pursuant to §5-03 of these rules.

(4) The Office of Environmental Coordination shall succeed to functions performed by the City Clerk pursuant to Executive Order 91 with respect to the receipt and filing of documents.

(5) References in these rules and in Executive Order 91 to specific agencies and provisions of law shall be deemed to apply to successor agencies and provisions of law.

(c) **Definitions.** (1) All definitions contained in Executive Order 91, other than the definitions of "agency" and "lead agencies", shall apply to these rules.

(2) "Action" as defined in §6-02 of Executive Order 91 includes all contemporaneous or subsequent actions that are included in a review pursuant to City Environmental Quality Review.

(3) The following additional definitions shall apply to these rules unless otherwise noted:

Agency. "Agency" shall mean any agency, administration, department, board, commission, council, governing body or other governmental entity of the city of New York, including but not limited to community boards, borough boards and the offices of the borough presidents, unless otherwise specifically referred to as a state or federal agency.

City Environmental Quality Review. "City Environmental Quality Review" (CEQR) shall mean the environmental quality review procedure established by Executive Order 91 as modified by these rules.

Determination of Significance. "Determination of significance" shall mean a negative declaration, conditional negative declaration or notice of determination (positive declaration).

Interested Agency. "Interested agency" shall mean an agency that lacks jurisdiction to fund, approve or directly undertake an action but requests or is requested to participate in the review process because of its specific concern or expertise about the proposed action.

Involved Agency. "Involved agency" shall mean any agency that has jurisdiction to fund, approve or directly undertake an action pursuant to any provision of law, including but not limited to the Charter or any local law or resolution. The City Council shall be an involved agency for all actions for which, as a component of the approval procedure for the action or a part thereof, the City Council has the power to approve or disapprove, regardless of whether the City Council chooses to exercise such power.

Lead Agency. "Lead agency" shall mean the agency principally responsible for environmental review pursuant to these rules.

Scoping. "Scoping" shall mean the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of non-relevant issues.

SEQRA Regulations. "SEQRA Regulations" shall mean Part 617 of Volume 6 of New York Codes, Rules and Regulations.

(d) **Applicability.** These rules and Executive Order 91 shall apply to environmental review by the city that is required by the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) and regulations of the State Department of Environmental Conservation thereunder and shall not be construed to require environmental quality review of an action where such review would not otherwise be required by such act and regulations, or to dispense with any such review where it is otherwise required.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

28 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-03 Establishment of Lead Agency.

(a) **General Rule.** Where only one agency is involved in an action, that agency shall be the lead agency.

(b) **Actions Subject to ULURP and Charter Sections 197-a, 200, 201, and 668.** (1) For actions subject to the Uniform Land Use Review Procedure of §197-c of the Charter (ULURP), and for which the applicant is not a city agency, the City Planning Commission shall be the lead agency.

(2) For actions that involve plans for the development, growth and improvement of the city, its boroughs and community districts (Charter §197-a), the City Planning Commission shall be the lead agency.

(3) For actions that involve zoning map or text changes (Charter §200 and/or 201), the following rules shall apply:

(i) If the only approval subject to ULURP or to Charter § 200 or 201 is a zoning map or text change, the City Planning Commission shall be the lead agency.

(ii) If the applicant for any action requiring a zoning map or text change is not a city agency, the City Planning Commission shall be the lead agency.

(iii) If the action involves a zoning map or text change, in addition to another approval under Charter §197-c (ULURP) for which there is a city agency applicant, then the city agency applicant shall be the lead agency, provided, however, that the City Planning Commission shall be the lead agency if:

(A) The action involves a zoning map or text change that covers or may apply to areas substantially larger than the

properties covered by the non-zoning approvals required under Charter §197-c; or

(B) The city agency applicant and the Chair of the City Planning Commission agree that the action involves a zoning map or text change that changes the uses permitted so as to substantially alter the area zoning pattern.

(4) For all other actions subject to §197-c of the Charter (ULURP) for which the applicant is a city agency, and for actions subject to §668 of the Charter for which the applicant is a city agency, the city agency applicant shall be the lead agency. Where there is more than one city agency applicant, the city agency applicants shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(5) Where no other provision of this section applies and an action involves a special permit or variance from the Board of Standards and Appeals (Charter §668) for which the applicant is not a city agency, the Board of Standards and Appeals shall be the lead agency.

(c) **Section 195 Acquisitions of Office Space or Existing Buildings for Office Use.** For actions involving acquisitions of office space or existing buildings for office use (Charter §195), the agency filing the notice of intent to acquire shall be the lead agency.

(d) **Local Laws.** The City Council and the Office of the Mayor shall be co-lead agencies for local laws. Either agency may at any time delegate to the other its lead agency status and act instead as an involved agency. In addition, after introduction of a proposed local law, the City Council may assume sole lead agency status after giving the Mayor five days notice.

(e) **Franchises, Revocable Consents, and Concessions.** For actions involving franchises, revocable consents and concessions, the responsible agency as defined in Charter §362(c) shall be the lead agency.

(f) **Leasing of Wharf Property for Waterfront Commerce or Navigation and Waterfront Plans.** For actions involving the leasing of wharf property belonging to the city primarily for purposes of waterfront commerce or in furtherance of navigation (Charter §1301(2)(f)), the Department of Business Services shall be the lead agency, provided that the Department of Transportation shall be the lead agency for such actions when it is acting pursuant to Charter §2903(c)(2). For actions involving determinations of the Commissioner of Business Services pursuant to Charter §1302 (waterfront plans), the Department of Ports and Trade shall be the lead agency.

(g) **Selection of Lead Agency in the Case of Multiple Involved Agencies.** (1) Subdivision (b) of this section, which governs lead agency designation for actions involving approvals pursuant to ULURP or §197-a, 200, 201 or 668 of the Charter, shall always govern determination of the lead agency regardless of whether the action involves additional approvals pursuant to other provisions of law.

(2) For any other action involving more than one agency, the agencies designated in subdivisions (c) through (f) of this section and any agencies involved in any required city approval, other than approvals described in such subdivisions, shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(h) **Procedure for Selection of Lead Agency.** In selecting a lead agency where agreement among agencies is required by this section, and in deciding whether transfer of lead agency status is appropriate, the agencies making the selection or decision shall determine which agency is most appropriate to act as lead agency for the particular action. In making such determination, such agencies shall consider, but shall not be limited to considering, the following criteria:

(1) The agency that will have the greater degree of responsibility for planning and implementing the action;

(2) The agency that will be involved for a longer duration;

(3) The agency that has the greater capability for providing the most thorough environmental assessment;

(4) The agency that has the more general governmental powers as compared to single or limited powers or purposes;

(5) The agency that will provide the greater level of funding for the action;

(6) The agency that will act earlier on the proposed action; and

(7) The agency that has the greater role in determining the policies resulting in or affecting the proposed action.

(i) **Transfer of Lead Agency Status.** Lead agency status may be transferred from the lead agency, at its discretion, to an involved agency that agrees to become the lead agency. In deciding whether a transfer of lead agency status is appropriate, agencies shall use the selection procedure set forth in subdivision (h) of this section. Notice of transfer of lead agency status must be given by the new lead agency to the applicant and all other involved and interested agencies within 10 days of the transfer. The Chair of the City Planning Commission may act on behalf of such Commission pursuant to this subdivision.

(j) **Selection of Lead Agency Where Actions Involve City and State Agencies.** Where an action involves both city and state agencies, the city agency prescribed by or selected pursuant to subdivisions (a) through (i) of this section shall, together with such state agencies, participate in selection of the lead agency pursuant to SEQRA, and such selection shall be binding upon the city. The criteria set forth in §617.6(e)(5) of the SEQRA Regulations shall be considered in deciding whether or not a city agency shall serve as lead agency. The Office of Environmental Coordination shall perform the functions set forth in subdivision (d) of §5-04 of these rules.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

CASE NOTES

¶ 1. Where the applicant is a city agency and multiple agencies are involved, the agencies can decide among themselves as to which agency would be the lead agency for purposes of land use review. Landmark West v. Burden, N.Y.L.J. Apr. 22, 2004 at 18, col. 1 (Sup.Ct. New York Co.).

Rules of the City of New York

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

62 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-04 The Office of Environmental Coordination.

(a) The Director of City Planning and the Commissioner of the Department of Environmental Protection shall designate persons from the staffs of the Departments of City Planning and Environmental Protection who shall comprise the Office of Environmental Coordination (OEC). The OEC shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.

(b) The OEC shall perform any environmental review function assigned to it by a lead agency, except the OEC may not issue, amend or rescind a determination of significance, notice of completion of a draft or final environmental impact statement, written findings following issuance of a final environmental impact statement, or analogous statements, notices or findings for a supplemental environmental impact statement. In addition, the lead agency may not delegate to the OEC its responsibility to issue the final scope or to attend the scoping meeting; however, the lead agency may delegate to the OEC the power to chair the scoping meeting.

(c) In addition to any other functions the OEC may perform pursuant to these rules, the OEC shall:

(1) Work with appropriate city agencies to develop and maintain technical standards and methodologies for environmental review and, upon request, assist in the application by agencies of such standards and methodologies;

(2) Work with appropriate city agencies to develop and maintain a technical database that may be utilized by applicants and city agencies in completing the standardized environmental assessment statement described in this subdivision and in preparation of draft and final environmental impact statements;

(3) Prepare and maintain a standardized environmental assessment statement, which shall provide guidance in determining whether the action may have a significant effect on the environment;

(4) At the request of a lead agency, coordinate the work of the technical staffs of interested agencies in order to complete environmental review, and expedite responses by interested agencies to requests of the lead agency;

(5) (i) Receive and maintain on file notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes issued pursuant to §5-07 of these rules, draft and final environmental impact statements, and significant supporting documentation comprising the official records of environmental reviews,

(ii) provide to the public upon request, or make available for inspection by the public during normal business hours, materials maintained on file pursuant to this paragraph,

(iii) publish a quarterly listing of all notifications of commencement, determinations of significance, draft and final scopes and draft and final environmental impact statements received and filed pursuant to this paragraph, and

(iv) in its discretion, advise lead agencies as to whether such documents are consistent with standards and methodologies developed pursuant to this subdivision and reflect proper use of the standardized environmental assessment statement;

(6) Provide to lead agencies staff training, management assistance, model procedures, coordination with other agencies, and other strategies intended to remedy any problems that arise with respect to consistency with standards and methodologies developed pursuant to this subdivision or proper use of the standardized environmental assessment statement;

(7) Provide to lead agencies a format for notices of public scoping meetings, assist lead agencies in ensuring that public scoping meetings are conducted in an effective manner, and, to the extent the OEC deems appropriate, comment on the draft scope and participate in such meetings;

(8) Prepare standardized forms for notifications of commencement of environmental review, determinations of significance, notices of completion of draft and final environmental impact statements, and, as may be appropriate, other environmental review documents; and

(9) Work with appropriate city agencies to develop and implement a tracking system to ensure that mitigation measures are implemented in a timely manner, and to evaluate and report on the effectiveness of mitigation measures.

(d) Any state agency that seeks a determination whether a city agency shall serve as the lead agency for an action that involves city and state agencies should initially communicate with the OEC. Upon receipt of such communication, the OEC shall ascertain the city agency which is designated as lead agency by or pursuant to these rules and shall notify such agency of such communication. Such designated agency may then act pursuant to subdivision (j) of §3 of these rules.

(e) Where an action or part thereof has been or will be reviewed by a federal agency, the OEC shall assist city agencies in coordinating review with the appropriate federal agency.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

Rules of the City of New York

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

62 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-05 Environmental Review Procedures.

(a) **Threshold Determination.** (1) In the case of any action for which a lead agency is prescribed by §5-03 of these rules, and thus for which no agreement among involved agencies is necessary, only such lead agency may determine that such action, considered in its entirety, requires environmental review, and such determination shall be binding upon the city. The OEC shall, upon the request of such agency, assist in such deter- mination.

(2) In the case of any action for which agreement among involved agencies is necessary for selection of a lead agency, if an agency that could be the lead agency for the particular action pursuant to subdivisions (b) through (g) of §5-03 of these rules determines that such action may require environmental review, then the lead agency shall be agreed upon as provided in §3 of these rules, and such lead agency shall determine whether such action, considered in its entirety, requires environmental review. Such determination shall be binding upon the city. The OEC shall assist in any determination made pursuant to this paragraph upon the request of the agency making such determination.

(3) Nothing contained in this subdivision shall be construed to require an affirmative determination, whether formal or informal, that an action is exempt from environmental review, or is a Type II action pursuant to the SEQRA Regulations, where such determination would not otherwise be required by law.

(b) **Other Determinations.** (1) After the determination that an action requires environmental review, the lead agency shall notify the OEC that it is commencing environmental review and complete or cause to be completed the standardized environmental assessment statement provided by the OEC. Such statement shall provide guidance in determining whether the action may have a significant effect on the environment. The OEC and interested and involved agencies shall, upon the request of the lead agency, assist the lead agency in completing such statement.

(2) The OEC and interested and involved agencies shall, upon the request of the lead agency, assist such lead agency with respect to any aspect of a determination of significance and/or a draft, final and/or supplemental environmental impact statement.

(3) Whenever, in the preparation of a draft environmental impact statement, the lead agency identifies a potential significant impact, the lead agency shall consult with any agency that has primary jurisdiction to carry out possible mitigations, and with any city agency that has primary regulatory jurisdiction over the subject matter of such impact.

(4) Lead agencies shall send copies of the following to the OEC upon issuance: notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes, draft and final environmental impact statements. In addition, lead agencies shall forward to the OEC significant supporting documentation comprising the official records of environmental reviews.

HISTORICAL NOTE

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Rules of the City of New York

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

62 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-06 Involved and Interested Agencies; Required Circulation.

(a) The lead agency and the OEC shall make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process. If the City Council is involved in an action, staff of the lead agency and/or staff of the OEC shall be made available to explain determinations made by the lead agency to the City Council or the appropriate City Council committee or staff.

(b) Any written information submitted by an applicant for purposes of a determination by the lead agency whether an environmental impact statement will be required by law, and documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law, shall be circulated to all affected community or borough boards, where such circulation is required by the Charter.

(c) If the City Council is involved in an action, any written information, documents or records that are required to be circulated to involved agencies or to affected community boards or borough boards shall be circulated to the City Council.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

Rules of the City of New York

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

62 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-07 Scoping.

Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

(a) **Draft Scope.** Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. The lead agency may consult with the OEC and other agencies prior to issuance of the draft scope.

(b) **Public Notice and Comment.** Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such meeting, and shall set forth guidelines for public participation in such meeting.

(c) **Agency Notice and Comment.** Upon issuance of the draft scope and not less than thirty nor more than

forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved), to the applicant, to the OEC and to agencies entitled to send representatives to the public scoping meeting pursuant to §197-c(d) or 668(a)(7) of the Charter. Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

(d) **Public Scoping Meeting.** The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved), the applicant, the OEC, and agencies entitled to send representatives pursuant to §197-c(d) or 668(a)(7) of the Charter may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. The OEC shall assist the lead agency in ensuring that the public scoping meeting is conducted in an effective manner.

(e) **Final Scope.** Within thirty days after the public scoping meeting, the lead agency shall issue a final scope, which may be prepared by the applicant and approved by the lead agency. The lead agency may consult further with the OEC and other agencies prior to issuance of the final scope. Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.

(f) **Scoping of City Agency Actions.** For actions which do not involve private applications, nothing contained in these rules shall be construed to prevent a lead agency, where deemed necessary for complex actions, from extending the time frames for scoping set forth in this section, or from adding additional elements to the scoping process.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

33 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 5-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-08 Applications and Fees.

(a) **Applications.** Applications submitted for City Environmental Quality Review for actions that require such review shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules. Such applications shall include information required to be obtained from applicants in order for the lead agency to complete or cause to be completed the standardized environmental assessment statement, and such other documents and additional information as the lead agency may require to make a determination of significance. In addition, except as otherwise provided in these rules, such applications shall conform to the requirements of Executive Order 91. Applicants shall file twenty-five copies of each application.

(b) **Fees.** Except as otherwise provided by this section, fees in effect on the effective date of these rules pursuant to Executive Order 91 and codified as §3-02 of these rules shall continue to govern City Environmental Quality Review applications, unless the City Planning Commission shall by rule modify such fees. Such fees shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules, and shall be in the form of a check or money order made out to the "City of New York."

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

Subd. (b) amended City Record June 28, 1995 eff. July 28, 1995. [See T62 §3-01 Note 2]

Rules of the City of New York

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

62 RCNY 5-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-09 Transition Section.

(a) An action shall not be subject to these rules, but shall comply with Executive Order 91, as in effect prior to the effective date of these rules, where:

(1) a classification as exempt, excluded or Type II has been made prior to the effective date of these rules;

(2) a project data statement has been completed more than thirty days prior to the effective date of these rules and a determination of significance has not been made prior to the effective date of these rules;

(3) a negative declaration or a conditional negative declaration has been issued prior to the effective date of these rules; or

(4) a notice of determination (positive declaration) has been issued more than thirty days prior to the effective date of these rules; provided, however, that if a negative declaration or conditional negative declaration is rescinded, or if a classification as exempt, excluded or Type II is no longer applicable, or if a supplemental environmental impact statement is required, or if a notice of determination (positive declaration) has been issued less than thirty days prior to the effective date of these rules or is issued on or after the effective date of these rules, these rules shall apply, and the lead agency prescribed by or selected pursuant to these rules shall thereupon assume lead agency status at the earliest time practicable.

(b) Except as provided in subdivision (a) of this section, the lead agency prescribed by or selected pursuant to these rules shall assume lead agency status at the earliest time practicable. If a determination of significance has not been

made and such lead agency determines that the action requires environmental review, it shall notify the OEC that it is commencing environmental review and shall complete or cause to be completed the standardized environmental assessment statement provided by the OEC, regardless of whether a project data statement has been completed. However, such lead agency shall not be required to engage in scoping pursuant to §5-07 of these rules if a final scope has already been prepared. Until the lead agency prescribed by or selected pursuant to these rules assumes lead agency status, the action shall be subject to Executive Order 91 as in effect prior to the effective date of these rules; however, after the effective date of these rules, the prior lead agency or agencies shall not issue a determination of significance or notice of completion of a draft or final environmental impact statement, classify an action as exempt, excluded or Type II, convene a scoping meeting or conduct a public hearing pursuant to CEQR.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

35 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 5-10

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-10 Severability.

The provisions of these rules shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of these rules, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of these rules and the application thereof shall not be affected thereby.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

36 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 5-11

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR)

§5-11 Effective Date.

These rules shall take effect on October 1, 1991.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Oct. 1, 1991.

37 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 5 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

[Supplemented by new statement of authority and purpose, Rules §5-01 (new CEQR rule)[62 RCNY Chapter 5]] WHEREAS, the improvement of our urban environment is critically important to the overall welfare of the people of the City; and

WHEREAS, the development and growth of the City can and should be reconciled with the improvement of our urban environment; and

WHEREAS, it is the continuing policy of the City that environmental, social and economic factors be considered before governmental approval is given to proposed activities that may significantly affect our urban environment; and

WHEREAS, subdivision (3) of §8-0113 of Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act, or "SEQRA") and the regulations promulgated thereunder (6 NYCRR 617) authorizes local governments to adopt rules, procedures, criteria and guidelines for incorporating environmental quality review procedures into existing planning and decision making processes; and

WHEREAS, the procedures formulated in the Executive Order are intended to be integrated into existing agency procedures, including the Uniform Land Use Review procedure contained in §197-c of Chapter 8 of the City Charter, in order to avoid delay and to encourage a one-stop review process; and

WHEREAS, §8-0117 of SEQRA, as amended, provides that only actions or classes of actions identified by the State Department of Environmental Conservation as likely to require preparation of an environmental impact statement shall be subject to this Executive Order until November 1, 1978, after which date non-exempt actions will be fully subject to this Executive Order; and

WHEREAS, the implementation of SEQRA in the City by this Executive Order will accomplish the purposes for which Executive Order No. 87 of October 18, 1973 ("Environmental Review of Major Projects") was promulgated and will continue the policy established therein.

[Exec. Order 91 continued except as otherwise provided, see Rules §5-02(a). See new Rules of Construction, Rules §5-02(b).] NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, Executive Order No. 87 of October 18, 1973 is, in accordance with the provisions of §§16 and 18 hereunder, hereby replaced by this Executive Order as follows:

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

2

[Footnote 2]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-01 Applicability.3

[Except as modified by City Planning Rules, §502(a) and (d).] No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

3

[Footnote 3]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-02 Definitions.

[Additional definitions, City Planning Rules §5-02(c).] As used herein, the following terms shall have the indicated meanings unless noted otherwise:

Action. **[Modified by City Planning Rules §5-02(c)(2).]** "Action" means any activity of an agency, other than an exempt action enumerated in §6-04 of this chapter, including but not limited to the following:

(1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

(2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

(3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;

(4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

Agency. **[Inapplicable. See City Planning Rules §5-02(a), §5-02(c)(3)(i).]**"Agency" means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

Applicant. "Applicant" means any person required to file an application pursuant to this chapter.

Conditional negative declaration. "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternative designed to avoid adverse environmental impacts.

DEC. "DEC" means the New York State Department of Environmental Conservation.

Environment. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

Environmental analysis. "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental assessment form. **[Retitled Environmental Assessment Statement; see City Planning Rules §5-04(c)(3).]** "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental impact statement (EIS). "Environmental impact statement (EIS)" means any written document prepared in accordance with §§6-08, 6-10, 6-12 and 6-13 of this chapter. An EIS may either be in a draft or a final form.

Environmental report. "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepare or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in §6-10 of this chapter as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this chapter, including the preparation of an EIS.

Lead agencies. **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-02(b)(1) and §5-02(c)(3)(vi); also see City Planning Rules §5-03 for choice of lead agency.]**

Ministerial action. "Ministerial action" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, a construction of its language or intent.

Negative declaration. "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.

Notice of determination. **[See also City Planning Rules §5-02(c)(3)(iii).]** "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which

announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

NYCRR. **[See also City Planning Rules §5-02(c)(3)(viii).]** "NYCRR" means the New York Code of Rules and Regulations.

Person. "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

Project data statement. **[Inapplicable, City Planning Rules §5-02(a). Superseded by Environmental Assessment Statement, see City Planning Rules §5-04(c)(3). See also City Planning Rules §5-05(b)(1) and §5-08(a).]**

SEQRA. "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

Typically associated environmental effect. "Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

ULURP. "ULURP" means the Uniform Land Use Review Procedure (§197-c of Chapter 8 of the New York City Charter).

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

40 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-03 Actions Involving Federal or State Participation.4

(a) **[See also City Planning Rules §5-04(e)]** If an action under consideration by an agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to §6-12 of this chapter.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter, and the action shall be fully subject to the same.

(b) **[Inapplicable, City Planning Rules §5-02(a). Entire subdivision (b) superseded by City Planning Rules §5-03(j)]) and §5-04(d).]**

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.
4

[Footnote 4]: * Section is part of Appendix A to Chapter 5.

41 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-04 Exempt Actions.

[See also City Planning Rules §5-02(d).] The following actions shall not be subject to the provisions of this chapter:

(a) projects or activities classified as Type I pursuant to §6-15 of this chapter directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (1), (2), (3) and (4) of this chapter;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan

or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to §6-15 of this chapter approved by an agency prior to September 1, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (2) and (5) of this chapter;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to §6-15 of this chapter directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" of this chapter;

(2) an action shall be deemed to be undertaken as provided in paragraphs (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) **[See City Planning Rules §5-02(d).]** ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in §6-15(a), Type I, of this chapter, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

42 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-05 Determination5 of Significant Effect-Applications.

(a) **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-05(a). See also City Planning Rules §5-02(b)(2) and §5-02(d).]**

(b) **[Introductory paragraph inapplicable, City Planning Rules §5-02(a). Paragraph (b) superseded by City Planning Rules §5-08.]** The applicant initiating the proposed action, other than an exempt or Type II action pursuant to §6-04 of this chapter, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of a determination pursuant to §6-03(b) of this chapter, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) **[Determination pursuant to §5-03(b) deemed to refer to lead agency selection pursuant to City Planning Rules §5-03. See City Planning Rules §5-02(b)(3).]** when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal or state agencies, which to

the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this chapter.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

5

[Footnote 5]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-06 Determination6 of Significant Effect-Criteria.

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to §6-13 of this chapter.

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

(b) **[Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e. where it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e. degree of change or its absolute size). Section 6-15 of this chapter refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

6

[Footnote 6]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-07 Determination7 of Significant Effect-Notification.

(a) **[Error. Reference to §6-05(a) should be to §6-05(b).]** The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to §6-05(a) of this chapter whether the proposed action may have a significant effect on the environment;

(1) **[Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** In making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in §6-06 and consider the lists of actions contained in §6-15 of this chapter;

(2) The lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) **Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13 See Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;

(v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) **Conditional Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):

(i) a list of conditions, modifications or alternatives to the proposed action which supports the determination;

(ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;

(iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

(3) **Notice of Determination. [Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

(i) an action description number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a brief description of the possible significant effects on the environment of the action;

(v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §§6-08 and 6-12 of this chapter.

(c) **[See additional circulation provisions, City Planning Rules §5-06(b) and §5-06(c). City Clerk function transferred to Office of Environ. Coord., City Planning Rules §5-02(b)(4).]** The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the regional director of the DEC, the commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

7

[Footnote 7]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-08 Draft8 Environmental Impact Statements-Responsibility for Preparation.

(a) **Non-agency applicants.**

(1) **[Rules add formal scoping, City Planning Rules §5-07. Interested and involved agencies assist with DEIS on request. See City Planning Rules §5-05(b)(2).]** After receipt of a Notice of Determination pursuant to §6-07(c)(3) of this chapter, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) **[See also City Planning Rules §5-05(b)(3) for requirements of lead consultation on mitigations.]** the lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) if the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) **Agency applicants.** (1) When an action which may have a significant effect on the environment is initiated by

an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) **[See City Planning Rules §5-05(b)(3)for requirements of lead consultation on mitigations.]** All agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

8

[Footnote 8]: * Section is part of Appendix A to Chapter 5.

46 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-09 Environmental9 Impact Statements-Content.

(a) **[Lead to be guided by technical standards and methodologies developed by Office of Environ. Coord., City Planning Rules §5-04(c).]** Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

9

[Footnote 9]: * Section is part of Appendix A to Chapter 5.

47 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-10

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-10 Draft Environmental10 Impact Statements-Procedures.

(a) **Notice of Completion.** Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) **Contents of Notice of Completion.** All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) **Circulating Notice of Completion.** All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) **Filing Notice of Completion.** All Notices of Completion shall be filed with and made available for public inspection by the following:

(i) the Commissioner of DEC;

(ii) the regional director of DEC;

(iii) the agency applicant, where applicable;

(iv) the appropriate Community Planning Board(s);

(v) the City Clerk;

(vi) the lead agencies.

(b) **Filing and availability of draft EIS. [City clerk function transferred to OEC, City Planning Rules §5-02(b)(4).]** All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) **Public hearings on draft EIS.** (1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regulation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62

RCNY Chapter 5 is intended by this Appendix.
10

[Footnote 10]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-11

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-11 Final11 Environmental Impact Statements-Procedures.

(a) **[Interested and involved agencies assist with FEIS on request, City Planning Rules §5-05(b)(2).]** Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in §6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in §6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to §6-1l(b) of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

11

[Footnote 11]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-12

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-12 Agency Decision Making.

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) **[Inapplicable, City Planning Rules, §5-02(a).]**

(2) **[Inapplicable, City Planning Rules, §5-02(a).]**

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

50 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-13

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-13 Programmatic12 Environmental Impact Statements.

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statements, master or area wide statements, or statements for comprehensive plans are often appropriate to assess the environmental effects of the following:

(1) a number of separate actions in a given geographic area;

(2) a chain of contemplated actions;

(3) separate actions having generic or common impacts;

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this section shall be processed in full compliance with the requirements of this chapter.

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

12

[Footnote 12]: * Section is part of Appendix A to Chapter 5.

Rules of the City of New York

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

62 RCNY 6-14

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-14 Rules and Regulations.

[Inapplicable, City Planning Rules §5-02(a).]

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

Rules of the City of New York

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

62 RCNY 6-15

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO CHAPTER 5 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]*1

§6-15 Lists of Actions.

(a) **Type I. [See City Planning Rules §5-02(d).]** Type I actions enumerated in §617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(1) relating to public institutions:

(i) new correction or detention centers with an inmate capacity of at least 200 inmates; (ii) new sanitation facilities, including:

(A) incinerators of at least 250 tons per day capacity;

(B) garages with a capacity of more than 50 vehicles;

(C) marine transfer stations;

(iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(iv) new schools with seating capacity of at least 1,500 seats;

(v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of an expanded facility exceeds 100,000 sq. ft. of floor area.

(2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of an expanded facility exceeds 240,000 sq. ft. of floor area.

(b) **Type II.** (1) **[See City Planning Rules §5-02(d).]** Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12 of 6 NYCRR 617.

(2) **[Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See City Planning Rules §5-02(a) and §5-02(b)(2).]**

Effective Date. **[See new City Planning transition rules §5-08 and §5-11. New Rules effective Oct. 1, 1991.]**

FOOTNOTES

1

[Footnote 1]: * Superseded by 62 RCNY Chapter 5 is Executive Order 91. Changes made to EO 91 by 62 RCNY Chapter 5 is intended by this Appendix.

53 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-01 Purpose and Authority.

(a) **Authority.** These rules of procedure and minimum standards are established for the review of plans for the development, growth and improvement of the city, its boroughs and communities. Such plans may be sponsored by the Mayor, the City Planning Commission (the "Commission"), the Department of City Planning (the "Department"), and any Borough President, borough board or community board, (which agencies shall be referred to as the "sponsor" herein) pursuant to §197-a(b) of the New York City Charter.

(b) **Policy Guidance.** An adopted plan shall serve as a policy to guide subsequent actions by city agencies. The Commission shall consider pertinent such consideration as is consistent with the City Charter and general law. Agencies are urged to consider adopted 197-a plans as guidance for pertinent actions, whether or not such actions are subject to Commission review.

The existence of an adopted 197-a plan shall not preclude the sponsor or any other city agency from developing other plans or taking actions not contemplated by the 197-a plan that may affect the same geographic area or subject matter.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

Rules of the City of New York

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

62 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-02 Plan Submission.

(a) **Notification of Intent.** To assist the Department in anticipating the need for technical assistance for the preparation of plans in the efficient scheduling of their review, the sponsor of a plan shall notify the Department of its intent to prepare and submit a plan. This notice shall be given not less than ninety (90) days prior to the submission of a proposed plan. Periodically, the Department shall report to the Commission on the notices received and on the progress of 197-a plans underway.

(b) **Submission.** Thirty (30) copies of all proposed plans shall be submitted to the Department of City Planning, Intake Office, 22 Reade Street, New York, N.Y. 10007. If a plan has been initiated by a community board, borough board or Borough President, this initial submission shall include a summary record of the public hearing held by the board or Borough President. The submission shall also include the name(s) and address(es) of the person(s) designated by the sponsor to be its representative(s) in any discussions of the plan.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

55 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-03 Threshold Review and Determination.

(a) **Department Review.** Each proposed plan shall be reviewed by the Department staff who shall report to the Commission not later than 90 days after the plan's submission as to whether the plan appears to meet the standards for form and content and for consistency with sound planning, as set forth in §6-04 of these rules. Prior to making the report, the staff shall inform the sponsor of all deficiencies with respect to form and content and any changes, additions or deletions which, in the opinion of the staff, may correct such deficiencies. The sponsor may, thereupon, indicate its willingness to make such changes, additions or deletions in which case the Department will defer its report to the Commission until the changes have been made. The sponsor may, instead, request that the plan be presented without change to the Commission for its threshold findings of form and content and sound planning policy.

At the time of any Department report on a proposed plan, the Commission may receive a similar report from representatives of the sponsor.

(b) **City Planning Commission Determination.** Within 30 days after its presentation by the Department staff, the Commission shall determine, when required by the Charter and in accordance with the standards set forth in §6-04 of these rules, whether the proposed plan is of appropriate form and sufficient content, and whether it is in accordance with sound planning policy.

If the Commission has determined that a proposed plan does not meet the standards for form or content or for sound planning policy, it shall direct the plan back to the sponsor with a statement explaining its deficiencies.

When the Commission has determined that a proposed plan is of appropriate form and content and is in accordance

with sound planning policy, it shall direct the Department to undertake the necessary environmental review if the plan has been sponsored by a community board in accordance with Article 5 of these rules. If the plan has been sponsored by an agency other than a community board the Commission shall determine whether a Type II declaration*1 , a negative declaration, or a notice of completion of a draft EIS has been issued, and if so, it shall direct the Department to distribute the plan in accordance with §6-06 of these rules.

(c) **Coordination of Plan Review.** The Commission may determine that, despite its finding of appropriate form and content and sound planning policy, a proposed plan should not immediately proceed because there are other planning efforts, ULURP reviews or environmental studies underway which should be coordinated with the plan. In such a case, the Commission may direct the Department to work with the sponsor and any other interested agencies in developing an appropriate timetable and strategy for the plan, and to report back to the Commission.

(d) **Progress Report.** When 180 days has elapsed following a threshold determination pursuant to subdivision (b), if a proposed plan has not been distributed for review either because the environmental review remains incomplete, or because the plan has been delayed pursuant to subdivision (c), the sponsoring agency may make a written request to the Commission to expedite the plan's distribution. The Commission shall direct the Department to report in writing within a fixed period of time the progress of the plan, including any outstanding aspects of the environmental review, or any continuing problems of coordination delaying its review. Upon receipt of the report, the Commission may direct the Department to complete the review within a reasonable period of time.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

FOOTNOTES

1

[Footnote 1]: * The Type II declaration is a declaration that the action is excused from environmental quality review.

Rules of the City of New York

62 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-04 Standards.

(a) **[Plan Form and Content].** The form and content of all proposed plans shall be consistent with the following:

(1) A plan may take the form of a comprehensive or master plan for a neighborhood, community district, borough or other broad geographic area of the city. Such a plan would combine elements related to housing, industrial and commercial uses, transportation, land use regulation, open space, recreation, community facilities and other infrastructure and service improvements which promote the orderly growth, improvement and future development of the community, borough or city.

(2) A plan may take the form of a targeted plan which considers one or a small number of elements of neighborhood, community districts, borough or citywide problems or needs. Such a plan shall have as its focus issues that are related to the use, development and improvement of land within the sponsor's geographic jurisdiction and may give consideration to the provision of various city services necessary to support orderly growth, development and improvement of that area.

(3) A plan shall not be limited to a single zoning lot or a specific parcel in private ownership. A plan shall cover an identifiable, cohesive geographic area or neighborhood.

(4) Plans shall be presented in clear language and coherent form with elements, chapters or sections that are organized in logical sequence.

(5) Plans shall state their goals, objectives or purposes clearly and succinctly. Policy statements or

recommendations shall contain documentation and explanation of the data, analysis or rationale underlying each. Plans shall demonstrate a serious attempt to analyze and propose policies that address the problems they identify.

(6) A plan shall contain, as appropriate, inventories or description and analysis of existing conditions, problems or needs; projections of future conditions, problems or needs; and recommended goals and strategies to address those conditions, problems or needs. The level of detail and analysis shall be appropriate to the goals and recommendations presented in the plan. The information and analysis relied upon to support its recommendations shall be sufficiently identified so that when the plan is later under review, the accuracy and validity of the information and analysis may be understood. Supporting information may be contained in the form of narrative, maps, charts, tables, technical appendices or the like.

(7) Plans shall be accompanied by documentation of the public participation in their formulation and preparation, such as workshops, hearings or technical advisory committees.

(b) **Sound Planning Policy.** (1) All plans, no matter what their form and content, shall include discussion of their long-range consequences, their impact on economic and housing opportunity for all persons (particularly those of low and moderate income), their provision of future growth and development opportunities, their ability to improve the physical environment and their effect on the fair geographic distribution of city facilities. In determining whether a proposed plan contains sufficient discussion of these issues, the Commission shall not evaluate the merits of the plan.

(2) A plan shall set forth goals, objectives, purposes, policies or recommendations that are within the legal authority of the city to undertake.

(3) A plan which considers issues which are under the jurisdiction of specific city or state agencies shall contain evidence that such agencies have been consulted and shall disclose any comments of such agencies.

(4) A plan shall show consideration of its relationship to applicable policy documents including the Ten Year Capital Strategy, the Zoning and Planning report, the borough and mayoral Strategic Policy Statements and any 197-a plan of a neighboring or superior jurisdiction.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

Rules of the City of New York

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

62 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-05 Environmental Review.

(a) **Lead Agency.** The City Planning Commission shall be the lead agency for all 197-a plans in accordance with the City Environmental Quality Review Regulations. For a plan sponsored by the mayor, the Commission may transfer the lead status to another city agency if it determines that the proposed plan is part of a broader set of actions for which the sponsoring agency is principally responsible.

(b) **Community Board Plans** The Department of City Planning, together with the Office of Environmental Coordination, shall conduct or cause to be conducted the required environmental review of any plan submitted by a community board.

(c) **Other Agency Plans.** The Department, on behalf of the Commission as lead agency, shall determine in consultation with any sponsor of a proposed plan which is not a community board, the appropriate scheduling and division of responsibilities for environmental review.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

62 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-06 Plan Distribution and Review.

(a) **Plan Distribution.** When pursuant to §6-03(b) of these rules, the Commission directs the Department to distribute a proposed plan, the Department shall transmit copies of the plan simultaneously to all affected community boards, Borough Presidents and borough boards, as defined in Charter §§196 and 197-a(c). The Commission may also direct its distribution to other agencies whose interests may be affected including neighboring community boards and Borough Presidents, and any city and state agency with jurisdiction over elements of the plan.

(b) **Community Board Review.** Each community board which has received from the Department of City Planning a proposed plan affecting land in its district shall conduct a public hearing on the plan except when a single borough-wide hearing is to be held on a borough plan. Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules for community board public hearings. Subsequent to the public hearing and within a period of sixty (60) days following its receipt of the plan, the community board shall transmit its written recommendation to the City Planning Commission with copies to the Borough President, City Council and the sponsor.

The Community board which is the sponsor of a plan and which held a hearing on it prior to filing with the Department, need not hold a second hearing.

(c) **Borough president review.** The Borough President shall have one hundred twenty (120) days following the receipt of a proposed plan in which to review the plan and submit written recommendation to the City Planning Commission with copies to the City Council and sponsor. The Borough President may choose to conduct a public hearing on the plan.

(d) **Borough board review.** Each borough board which has received from the Department of City Planning a proposed plan affecting land in two or more community districts in its borough shall conduct a public hearing on the plan. Such public hearing shall take place and the report of the borough board shall be transmitted within one hundred twenty (120) days following its receipt of the plan. In the case of a plan affecting the entire borough, a single borough-wide public hearing may be held in lieu of separate hearings by the community boards.

Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules governing borough board hearings. The borough board shall transmit its written recommendation to the City Planning Commission with copies to the City Council and the sponsor.

(e) **Request for review.** Any community board or borough board may make a written request to the Department to receive and review a copy of a proposed plan which does not involve land within its district or borough. In its request the Community board or borough board shall state the reason why the plan significantly affects the welfare of its district or borough. Upon receipt of the plan, the community board or borough board may conduct a public hearing and may make any recommendation to the City Planning Commission with copies to the City Council and sponsor. When it transmits such a plan, the Department shall notify the community board or borough board of the remaining time period during which it may review and comment on the plan.

(f) **Other requests.** A borough president may make a written request to the Department to receive and review a copy of a proposed plan for a district or area outside the borough. Any other interested party may similarly request a copy. Such request may be made to either the Department or the sponsor.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

62 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-07 City Planning Commission Review.

(a) **Schedule for Review.**

When the affected community board(s), Borough President(s) and/or borough boards shall have completed their review of any proposed plan involving land in their respective districts, the City Planning Commission shall commence its review and schedule a public hearing. Such hearing shall take place within a period of sixty (60) days following receipt of the last affected community board's, borough board's or Borough President's recommendation, or the final day of the time period provided for their respective review(s), whichever is earlier.

(b) **Public hearing.** Notice of the public hearing shall be given and the hearing conducted in accordance with the ULURP rules governing Commission hearings.

(c) **Commission resolution.** The Commission shall vote by resolution to approve, approve with modifications or disapprove the plan. Such vote shall be taken within 60 days following the public hearing; however, if the Commission finds that it is unable to vote within that time period it shall give a written statement of explanation to the sponsor. In its review of the substance of the plan, the Commission shall give consideration to the community, borough and citywide impacts and to the long-term efforts that could result from the actions or policies recommended by the plan. It shall consider the impact of the plan on economic and housing opportunity, on future growth and development, and on the physical environment. Such consideration shall include the consistency of the plan with other Charter-defined plans and reports such as the mayoral and borough Strategic Policy Statements, the Ten-Year Capital Strategy, the Report on Social Indicators, the Zoning and Planning Report, and any other pertinent adopted 197-a plans. It shall also consider the fair share criteria adopted pursuant to §203 of the City Charter in weighing any recommendation with respect to

proposed city facilities.

(d) **Commission Report.** The Commission shall accompany its resolution with a report which sets forth its considerations and any explanation for its determination. The report may identify any environmental issues which may arise in conjunction with any actions recommended by the Plan, it may set forth proposals for additional study and consideration that the Commission deems necessary to carry out any recommendations made by the plan and it may include recommendations for the implementation of plan elements. The report and resolution shall be transmitted to the Mayor, the affected community board(s) and Borough President(s), the City Council and the sponsor.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

Rules of the City of New York

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

62 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-08 Modifications.

(a) If the City Council, acting pursuant to the City Charter §197-d(d) has transmitted to the Commission a proposed modification of a plan, the Commission shall, within fifteen (15) days, review the proposed modification and transmit back to the Council its findings and recommendations. In determining whether the modification must be subject to additional environmental review, the Commission may consult appropriate staff or the Office of Environmental Coordination, and it must consult the lead agency if the lead has not been the Commission itself.

In determining whether the modification requires a new process of community, borough and Commission review, the Commission shall consider whether the proposed modification:

(1) would incorporate new elements*2 that were not a part of and are not related to the plan as it was previously reviewed.

(2) would delete entire elements or remove from the plan consideration of significant long-range consequences, impacts on economic and housing opportunity for all persons, provision of future opportunities for growth and development, ability to improve the physical environment, or effects on the fair geographic distribution of city facilities.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

FOOTNOTES

2

[Footnote 2]: * For purposes of these rules the term "elements" shall mean a chapter or section of a plan that comprises a full discussion or analysis of subject matter.

Rules of the City of New York

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

62 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 6 RULES FOR THE PROCESSING OF PLANS PURSUANT TO CHARTER SECTION 197-a

§6-09 Filing, Review and Revision.

(a) **Filing.** Upon final adoption of a plan by the City Council, the plan shall be filed and indexed by the Calendar Officer of the Department. The Department shall make copies of the plan available for review by the public and shall transmit the plan to all affected agencies for their use.

(b) **Revision of Plans.** A plan may be periodically reviewed and revised by its sponsor or the Commission may initiate such review. Any such revision may be presented for adoption as an amendment to the plan in accordance with the procedures set forth in these rules.

(c) **Summary of Plans.** In each Zoning and Planning Report adopted pursuant to Charter §192(b), the Commission shall include a summary of all 197-a plans adopted during the preceding four years.

HISTORICAL NOTE

Section added City Record July 3, 1991 eff. Aug. 2, 1991.

62 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

APPENDIX A TO TITLE 62 CRITERIA FOR THE LOCATION OF CITY FACILITIES*1

APPENDIX A TO TITLE 62 CRITERIA FOR THE LOCATION OF CITY FACILITIES*1

Attachment B Listing of Regional/Citywide Facilities, Transportation and Waste Management Facilities and Residential Facilities

Attachment C Types of Residential Facilities

Preface

These criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter. The fair distribution of city facilities will depend on balancing a number of factors, such as community needs for services, efficient and cost effective delivery of those services, effects on community stability and revitalization, and broad geographic distribution of facilities. Furthermore, these factors can be weighed more effectively, and siting decisions can be accepted more readily, when communities have been meaningfully informed and consulted early in the siting process. The intent of these guidelines is to improve, not to obstruct, the process of siting facilities.

Under the provisions of Section 204 of the Charter, the Mayor will prepare an annual Statement of Needs in accordance with these criteria. The Statement of Needs will provide early notice of facility proposals to Borough Presidents, Community Boards, and the public at large. It will be accompanied by a map and text indicating the location and current use of all city properties and of state and federal facilities, as designated by the Charter. This will allow the public and city agencies to assess the existing distribution of facilities and analyze factors of compatibility and concentration. Section 204 also provides procedures for public review and comment on the Statement of Needs, permits Borough Presidents to propose locations for city facilities, and requires city agencies to consider the statements that ensue from that review. Those provisions, together with these criteria, should provide a more open and systematic process for the consideration of facility sites.

The criteria will have several applications in the Section 204 proceedings. The Mayor and city agencies will use them in formulating plans for facilities. Community Boards will refer to them in commenting on the Statement of Needs, and Borough Presidents will employ them in recommending specific sites for facilities. The City Planning Commission will consider them in acting on site selection and acquisition proposals subject to the Uniform Land Use Review Procedure (ULURP) and in the review of city office sites pursuant to Section 195 of the Charter. Sponsoring agencies will also observe them in actions that do not proceed through ULURP such as city contracts, facility reductions, and closings. Although recognizing that non-city agencies are not subject to these criteria, the Commission encourages all such agencies to consider the factors identified in these criteria when they are siting facilities in this city.

Since the principles and procedures contained in these guidelines are new and untested, it is important to monitor and evaluate their effects. The Department of City Planning will undertake this evaluation and report its findings to the Commission and the Mayor within twenty-four months of adoption and periodically thereafter.

CASE NOTES

¶ 1. City defendands did not violate The New York City Fair Share Criteria for the Location of City Facilities, 62 RCNY Appendix A, by not informing and consulting with the community about a project financed by NYCHPD. Facility cannot be defined a "city facility" even though the City defendants were involved in planning and siting. The facility is operated by the staff of a nonprofit organization, programs at the facility are not pursuant to a written agreement and the monies given by the City do not comprise "funding" in a sense of financial assistance. Planning Bd. No. 4 v. Homes, 158 Misc. 2d 184 [1993], 600 NYS2d 619.

Article 1 Authority.

Pursuant to Section 203 of the New York City Charter, the City Planning Commission is authorized to establish criteria for the location of new city facilities, the significant expansion of existing facilities, and the closing or significant reduction in size or service capacity of existing facilities.

Article 2 Purpose and Goals.

The purpose of these criteria is to foster neighborhood stability and revitalization by furthering the fair distribution among communities of city facilities. Toward this end, the city shall seek to:

a) Site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of city facilities upon surrounding areas;

b) Base its siting and service allocation proposals on the city's long-range policies and strategies, sound planning, zoning, budgetary principles, and local and citywide land use and service delivery plans;

c) Expand public participation by creating an open and systematic planning process in which communities are fully informed, early in the process, of the city's specific criteria for determining the need for a given facility and its proposed location, the consequences of not taking the proposed action, and the alternatives for satisfying the identified need;

d) Foster consensus building to avoid undue delay or conflict in siting facilities providing essential city services;

e) Plan for the fair distribution among communities of facilities providing local or neighborhood services in accordance with relative needs among communities for those services;

f) Lessen disparities among communities in the level of responsibility each bears for facilities serving citywide or regional needs;

g) Preserve the social fabric of the city's diverse neighborhoods by avoiding undue concentrations of institutional uses in residential areas; and

h) Promote government accountability by fully considering all potential negative effects, mitigating them as much as possible, and monitoring neighborhood impacts of facilities once they are built.

Article 3 Definitions.

For purposes of these rules, the following definitions apply.

a) City facility:[1]2 A facility providing city services whose location, expansion, closing or reduction in size is subject to control and supervision by a city agency[2]3 , and which is: (i) operated by the city on property owned or leased by the city which is greater than 750 square feet in total floor area; or

(ii) used primarily for a program or programs operated pursuant to a written agreement on behalf of the city which derives at least 50 percent and at least $50,000 of its annual funding from the city[3]4 .

b) New facility: A city facility newly established as a result of an acquisition, lease, construction, or contractual action or the substantial change in use of an existing facility[4]5 .

c) Residential facility: A city facility with sleeping accommodations which provides temporary or transitional housing, provides for pre-trial detention or custody of sentenced inmates, or provides a significant amount of on-site support services for residents with special needs for supervision, care, or treatment[5]6 .

d) Local or neighborhood facility: A city facility serving an area no larger than a community district or local service delivery district (pursuant to Section 2704 of the Charter), in which the majority of persons served by the facility live or work (see Attachment A).

e) Regional or citywide facility: A facility which serves two or more community districts or local service delivery

districts, an entire borough, or the city as a whole and which may be located in any of several different areas consistent with the specific criteria for that facility as described in the Citywide Statement of Needs pursuant to Section 204 of the Charter (see Attachment B).

f) Significant expansion: An addition of real property by purchase, lease or interagency transfer, or construction of an enlargement, which would expand the lot area, floor area or capacity of a city facility by 25 percent or more and by at least 500 square feet. An expansion of less that 25 percent shall be deemed significant if it, together with expansions made in the prior three-year period, would expand the facility by 25 percent or more and by at least 500 square feet.

g) Significant reduction: A surrender or discontinuance of the use of real property that would reduce the size or capacity to deliver service of a city facility by 25 percent or more. A reduction of less than 25 percent shall be deemed significant if it, together with reductions made in the prior three-year period, would reduce the facility by 25 percent or more.

Article 4 Criteria for Siting or Expanding Facilities.

The following criteria and procedures apply to the siting of all new facilities other than administrative offices and data processing facilities ar.d the significant expansion of such facilities.

4.1 The sponsoring agency and, for actions subject to the Uniform Land Use Review Procedure (ULURP) or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Compatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site.

b) Extent to which neighborhood character would be adversely affected by a concentration of city and/or non-city facilities.

c) Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in this instance.

d) Consistency with the locational and other specific criteria for the facility identified in the Statement of Needs or, if the facility is not listed in the Statement, in a subsequent submission to a Borough President.

e) Consistency with any plan adopted pursuant to Section 197-a of the Charter.

CASE NOTES

¶ 1. City of New York violated Fair Share Criteria for locating City facilities, Charter §203, 62 RCNY ch 6, Appendix A, 4.1(c) by siting a multiagency garage and fueling facility on Piers 35 and 36 on the East River without conducting the required meaningful alternative site analysis, respondents having identified six alternative City owned sites and only one privately owned site. Silver v. Dinkins, 158 Misc. 2d 550 [1994].

4.2 **Procedures for Consultation** In formulating its facility proposals, the sponsoring agency shall:

a) Consider the Mayor's and Borough President's strategic policy statements, the Community Board's Statement of District Needs and Budget Priorities, and any published Department of City Planning land use plan for the area.

b) Consider any comments received from the Community Boards or Borough Presidents and any alternative sites proposed by a Borough President pursuant to Section 204(f) of the Charter, as well as any comments or recommendations received in any meetings, consultations or communications with the Community Boards or Borough Presidents. If the Statement of Needs has identified the community district where a proposed facility would be sited,

then, upon the written request of the affected Community Board, the sponsoring agency should attend the Board's hearing on the Statement. If the community district is later identified, then the sponsoring agency shall at that point notify the Community Board and offer to meet with the board or its designee to discuss the proposed program.

Article 5 Criteria for Siting or Expanding Local/Neighborhood Facilities.

In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new local or neighborhood facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment A).

5.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Need for the facility or expansion in the community or local service delivery district. The sponsoring agency should prepare an analysis which identifies the conditions or characteristics that indicate need within a local area (e.g., infant mortality rates, facility utilization rates, emergency response time, parkland/population ratios) and which assesses relative needs among communities for the service provided by the facility. New or expanded facilities should, wherever possible, be located in areas with low ratios of service supply to service demand.

b) Accessibility of the site to those it is intended to serve.

5.2 A Community Board may choose to designate or establish a committee to monitor selected local facilities after siting approval pursuant to these criteria. Following site selection and approval for such a facility, the sponsoring agency and Community Board shall jointly establish a mutually acceptable procedure by which the agency periodically reports to the committee regarding the plans and procedures that may affect the compatibility of the facility with the surrounding community and responds to community concerns.

Article 6 Criteria for Siting or Expanding Regional/Citywide Facilities.

In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new regional and citywide facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment B).

6.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria:

a) Need for the facility or expansion. Need shall be established in a citywide or borough-wide service plan or, as applicable, by inclusion in the city's ten-year capital strategy, four-year capital program, or other analyses of service needs.

b) Distribution of similar facilities throughout the city. To promote the fair geographic distribution of facilities, the sponsoring agency should examine the distribution among the boroughs of existing and proposed facilities, both city and non-city, that provide similar services, in addition to the availability of appropriately zoned sites.

c) Size of the facility. To lessen local impacts and increase broad distribution of facilities, the new facility or expansion should not exceed the minimum size necessary to achieve efficient and cost-effective delivery of services to meet existing and projected needs.

d) Adequacy of the streets and transit to handle the volume and frequency of traffic generated by the facility.

6.2 Where practicable, the Mayor may initiate and sponsor a consensus building process to determine the location of a proposed regional facility. A Borough President may submit a written request for such a process if the request is made within 90 days of publication of the Statement of Needs or, if the facility is not listed in the Statement, within 30

days of a subsequent submission to the Borough President.

In the consensus building process, representatives of affected interests will convene to assess potential sites in accordance with these criteria and the specific criteria set forth in the Statement of Needs. The participants may include but need not be limited to representatives of the Mayor, the sponsoring agency, the Borough President(s), and the affected Community Board(s). The participants may review any issue relevant to site selection under these criteria. The process shall be completed within a reasonable time period to be determined by the Mayor. If location of the facility is subject to ULURP, the process shall be completed prior to submission of a ULURP application. If the participants (including the sponsoring agency) reach consensus, the agency will submit whatever agreements were reached regarding the facility and site to the City Planning Commission as part of its ULURP application for the site. If no such consensus is reached, the sponsoring agency may initiate ULURP, if applicable, for its proposed site.

6.3 Upon the request of the Borough President and/or Community Board, a sponsoring agency and Community Board shall establish a facility monitoring committee, or designate an existing Community Board committee, to monitor a facility following selection and approval of its site. The agency shall inform the committee of plans and procedures that may affect the compatibility of the facility with the surrounding community. Once the facility is constructed, the sponsoring agency shall meet with the committee according to a schedule established by the committee and agency to report on the status of those plans and procedures and to respond to community concerns. The committee may also submit reports to the agency head addressing outstanding issues. The agency head shall respond to the committee's report within 45 days and shall identify the actions, if any, that the agency plans in response to such concerns.

6.4 Transportation and Waste Management Facilities.

Transportation and waste management facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.41 The proposed site should be optimally located to promote effective service delivery in that any alternative site actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter would add significantly to the cost of constructing or operating the facility or would significantly impair effective service delivery.

6.42 In order to avoid aggregate noise, odor, or air quality impacts on adjacent residential areas, the sponsoring agency and the City Planning Commission, in its review of the proposal, shall take into consideration the number and proximity of existing city and non-city facilities, situated within approximately a one-half mile radius of the proposed site, which have similar environmental impacts.

6.5 Residential Facilities.

Regional or citywide residential facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.51 Undue concentration or clustering of city and non-city facilities providing similar services or serving a similar population should be avoided in residential areas.

6.52 Necessary support services for the facility and its residents should be available or provided.

6.53 In community districts with a high ratio*7 of residential facility beds to population, the proposed siting shall be subject to the following additional considerations:

a) Whether the facility, in combination with other similar city and non-city facilities within a defined area surrounding the site (approximately a half-mile radius, adjusted for significant physical boundaries), would have a significant cumulative negative impact on neighborhood character.

b) Whether the site is well located for efficient service delivery.

c) Whether any alternative sites actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter which are in community districts with lower ratios of residential facility beds to population than the citywide average would add significantly to the cost of constructing or operating the facility or would impair service delivery.

To facilitate this evaluation, the Department of City Planning will publish annually an index of the number of beds per thousand population, by type of residential facility (as set forth in Appendix C) and overall, in each community district. The index will be based upon the number of beds in all city, state, federal, and private facilities in operation or approved for operation.

Article 7 Criteria for Siting or Expanding Administrative Offices and Data Processing Facilities.

The following criteria apply to the siting of new city administrative offices and data processing facilities and the significant expansion of such facilities, pursuant to Section 195 of the City Charter.

7.1 The sponsoring agency and the City Planning Commission shall consider the following criteria:

a) Suitability of the site to provide cost-effective operations.

b) Suitability of the site for operational efficiency, taking into consideration its accessibility to staff, the public and/or other sectors of city government.

c) Consistency with the locational and other specific criteria for the facility stated in the Statement of Needs.

d) Whether the facility can be located so as to support development and revitalization of the city's regional business districts without constraining operational efficiency.

Article 8 Criteria for Closing or Reducing Facilities.

The following criteria and procedures apply to the closing of existing facilities and the significant reduction in size or capacity to deliver service of existing facilities.

8.1 The sponsoring agency shall consider the following criteria:

a) The extent to which the closing or reduction would create or significantly increase any existing imbalance among communities of service levels relative to need. Wherever possible, such actions should be proposed for areas with high ratios of service supply to service demand.

b) Consistency with the specific criteria for selecting the facility for closure or reduction as identified in the Statement of Needs.

8.2 In proposing facility closings or reductions, the sponsoring agency shall consult with the affected Community Board(s) and Borough President about the alternatives within the district or borough, if any, for achieving the planned reduction and the measures to be taken to ensure adequate levels of service.

Article 9 Actions not Subject to the Uniform Land Use Review Procedure or Section 195.

9.1 Whenever an agency takes an action with respect to a city facility that is subject to these criteria but is not subject to ULURP or to Charter Section 195 review, the agency shall submit a statement to the Mayor, with copies to the affected Community Board(s), Borough President, and Department of City Planning, which describes the agency's consideration and application of the relevant sections of these criteria, and states the reasons for any inconsistencies.

Attachment A

Local/Neighborhood Facilities*

Branch libraries

Community cultural programs

Community health/mental health services

Community-based social programs

Day care centers

Drop-off recycling centers

Employment centers

Fire stations

Local, non-residential drug prevention and/or treatment centers Local parks

Parking lots/garages

Police precincts

Sanitation garages

Senior centers

* List is illustrative and should not be considered to include all such facilities.

Attachment B

Regional/Citywide Facilities*

Administrative offices

Courts

Data processing facilities

Department of Health centers

Income maintenance centers

Maintenance/storage facilities

Museums, zoos, performance centers, galleries and gardens

Regional, non-residential drug prevention and/or treatment centers

Regional parks

Transportation and Waste Management Facilities:

Airports, heliports

Ferry terminals

Sewage treatment plants

Sludge management and transfer facilities

Solid waste transfer and recycling facilities

Solid waste landfills

Solid waste incinerators, resource recovery plants

Residential Facilities:

Group homes/halfway houses

Hospices

Nursing homes/health-related facilities

Prisons, jails, detention, remand facilities

Residential facilities for children

Residential substance abuse facilities

Secure and non-secure detention facilities for children

Supported housing for people with mental health or physical problems

Temporary housing

Transitional housing

* List is illustrative and should not be considered to include all such facilities.

Attachment C

Types of Residential Facilities (as referenced in Section 6.53)*

a) Correctional facilities, including prisons, jails, detention and remand facilities, and secure detention for children

b) Nursing homes and health-related facilities, including hospices

c) Small residential care facilities and temporary housing facilities, serving no more than 25 people, including group homes, halfway houses, residential facilities for children, residential substance abuse and mental health/retardation facilities, supported housing, shelters, temporary and transitional housing, non-secure detention for children

d) Large temporary and transitional housing facilities, providing shelter or transitional housing for more than 25 people

e) Large residential care facilities, serving more than 25 people, including halfway houses, residential facilities for

children, homes for adults, residential substance abuse and mental health/retardation facilities, supported housing, psychiatric centers

* Lists by type are illustrative and should not be considered to include all such facilities.

FOOTNOTES

1

[Footnote 1]: * Adopted by the City Planning Commission on December 3, 1990 is the Criteria for the Location of City Facilities. Set forth herein for the sake of convenient public access to such materials and in order to increase public familiarity and awareness of such rules, adoption of the Rules is not governed by the City Administrative Procedure Act.

2

[Footnote 2]: 1 Only city facilities are susceptible to these criteria. However, the sponsoring agency and the City Planning Commission will take into consideration the number and proximity of all other facilities-whether private, city, state, or federal-in proposing or evaluating the location of a city facility.

3

[Footnote 3]: 2 As a substance of law, the criteria do not relate to siting of facilities by private entities, state or federal agencies, or various entities operating within the City of New York which have been initiated by or pursuant to state law (e.g., the School Construction Authority, the Health and Hospitals Corporation, the Housing Authority, the New York City Transit Authority, and the City University of New York). To the extent that federal, state or city laws controlling the siting of such facilities provide for approvals or recommendations by the City Planning Commission, the Commission will keep in consideration these criteria in making their approvals or recommendations.

4

[Footnote 4]: 3 Any state, federal, or private funding which enters the city's treasury will be considered city funding for this purpose unless other law, regulations, conditions, or restrictions upon the funding, reserve to non-city agencies authority over facility siting.

5

[Footnote 5]: 4 Contract or lease renewals that do not notably change the use, size or capacity of a city facility are not governed by these criteria since they do not result in the creation of a new facility or the significant growth or reduction of an existing facility.

6

[Footnote 6]: 5 Employment of these criteria for the siting of residential facilities shall be consistent with the federal Fair Housing Act and any other specifications of federal and state law.

7

[Footnote 7]: * In general, the twenty community districts with the greatest ratios of facility beds to population, by type of residential facility, will be deemed to have a high ratio for that type.

Rules of the City of New York

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

62 RCNY 7-01 [Concession

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-01 [Concession Subject to ULURP and Council Review.]

A concession shall be considered a major concession and therefore subject to §§197-c and 197-d of the Charter only if:

(a) it has been determined pursuant to City Environmental Quality Review to require an Environmental Impact Statement, or

(b) except as provided in §7-03, the concession will cause one or more of the thresholds set forth in §7-02 to be exceeded.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major

concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

64 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 7-02 [Major

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-02 [Major Concession Defined; Specific Uses, Thresholds e.g. Marinas, Spectator Sport Use, Parks.]

A concession shall be considered a major concession if it will cause one or more of the thresholds given for the specific uses listed below to be exceeded:

(a) marinas with over 200 slips;

(b) a permanent performance or spectator sport use with over 2,500 seats;

(c) for parklands in or adjacent to Community Districts subject to the comprehensive off-street parking regulations, contained in Article I, Chapter 3 of the Zoning Resolution of the City of New York, accessory parking lots with over 150 spaces and, for all other areas, accessory parking lots with over 250 parking spaces on parklands;

(d) a use for which a new building of over 20,000 square feet of gross floor area will be constructed when such building will be located on property other than parkland;

(e) a use for which a new building of more than 15,000 square feet of gross floor area will be constructed when such building will be located on parkland;

(f) an open use which occupies more than 42,000 square feet of open space other than parkland;

(g) an open use which occupies over 30,000 square feet of a separate parcel of parkland;

(h) a use which in total occupies more than 2,500 square feet of floor area or open space and more than 15 percent

of the total square footage of a separate parcel of land that is improved for park purposes, including passive and active recreational use, or that was improved for such purposes at any time during the preceding year; or

(i) a concession comprised of two or more components, no one of which exceeds thresholds set forth in paragraphs (a) through (h) above, where at least two of such elements each exceed 85 percent of any applicable threshold set forth in such paragraphs.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

65 of 65 DOCUMENTS

Rules of the City of New York

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

62 RCNY 7-03 [Concessions

RULES OF THE CITY OF NEW YORK

Title 62 City Planning

CHAPTER 7 RULES FOR THE DEFINITION OF MAJOR CONCESSIONS*1

§7-03 [Concessions That are not Major Concessions.]

Notwithstanding any other provision of these rules the following shall not be considered major concessions unless an EIS is required:

(a) A concession for any use which will be operated for 30 days or less;

(b) A concession which is or directly furthers an active recreational use and would be available to the general public on a non-discriminatory basis, with or without a fee, including but not limited to the following:

(1) a seasonal covering of recreational facilities,

(2) a carousel, or

(3) a use intended for active participation sports including playing fields or sports courts (e.g., tennis, volleyball, handball, softball), skating rinks, playgrounds, and practice facilities (e.g., batting cages, golf driving ranges, miniature golf);

provided that the area occupied by such recreational use does not exceed both 15 acres and 50 percent of a separate parcel of land;

(c) Reuse of former amusement park lands for amusement or recreational purposes;

(d) Any renewal, reissuance, extension, amendment of an existing concession or issuance of a new concession

which continues a currently existing use or which permits a use which existed lawfully on the property at any point in the preceding two years, whether operated by a private or public entity, provided that any extension or amendment or the cumulative effect of any amendments or extensions made over any five year period does not include modifications which when added to the existing concession, cause any threshold of §7-02 to be exceeded and increase the size of an existing concession by ten percent or more;

(e) A concession for which authorization to use a different procedure was granted or obtained, or which is operated under an agreement executed, prior to the effective date of this major concession rule;

(f) A concession for lines, cables, conduits or underground pipes not used for the transport of people;

(g) A concession on wharf property or waterfront property primarily for purposes of "waterfront commerce" or in "furtherance of navigation" as such terms are defined in the New York City Charter;

(h) A concession on wharf property for purposes other than "waterfront commerce" or in "furtherance of navigation" which is granted pursuant to §1301.2(h) of the City Charter; or

(i) A concession for an open air market which operates two (2) or fewer days per week, or, if a green market, three (3) or fewer days per week.

HISTORICAL NOTE

Section added City Record Jan. 4, 1999 eff. Feb. 3, 1999. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 4, 1999. Note: Statement of Basis and Purpose of Major Concession Rule. Section 374 of the New York City Charter requires the City Planning Commission to adopt rules that "either list major concessions or establish a procedure for determining whether a concession is a major concession." This rule provides standards for determining major concessions based upon their land use impacts or implications.

63 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-01 Quorum.

A quorum of the Landmarks Preservation Commission shall consist of six Commissioners. Public hearings and public meetings may be conducted without a quorum.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-02 Calendaring.

The Landmarks Preservation Commission may, upon the adoption of a motion, calendar an item to be considered for landmark designation. A motion to calendar must be approved by the majority of the Commissioners present in order to be adopted. The date of the public hearing on the proposed designation may be set by the motion to calendar or it may be set at some later time by the Chairman, acting at his or her discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Landmarks Preservation Commission was not required to hold a public hearing before declining the calendar a request for a property's designation as a landmark. **Landmarks West v. Burden,** 15 A.D.3d 308 790 N.Y.S.2d 107 (1st Dept. 2005).

Rules of the City of New York

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

63 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-03 Withdrawing and Laying Over Certificate of Appropriateness Items.

Once an application has been included on a Certificate of Appropriateness public hearing calendar, it may be withdrawn or laid-over as follows:

(a) **Lay-Overs (requests prior to being heard).** If an application has been included on a Certificate of Appropriateness calendar and the hearing has not yet occurred, the applicant may request that the application be laid-over to a subsequent public hearing. The applicant must send the Landmarks Preservation Commission a letter indicating that he or she would prefer to be heard on a subsequent hearing and stating that the Commission's time to act on the matter is being extended for an equivalent length of time. Upon receipt of this request staff will withdraw the item and hold it for the following month's hearing. Where the application concerns, in whole or in part, the legalization or curing of a violation, the applicant shall be allowed to lay over the item only once as of right. If the applicant requests a subsequent lay-over, the Chair may at his or her own discretion consider the request a request for withdrawal and may withdraw the item pursuant to the procedure set forth in subsection (b)(1) of this section, or, if the application seeks to legalize a violation, the Chair may keep the item on the calendar and the Commission may act on it at the public hearing. Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a dissapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

(b) **Withdrawals (requests prior to being heard).** If an application has been included on a Certificate of Appropriateness public hearing calendar and the hearing has not yet occurred, the application may be withdrawn from the calendar as follows:

(1) by the applicant if the applicant sends a letter to the Landmarks Preservation Commission indicating that he or she wishes to abandon the application as proposed. Staff withdraws the item and generates the "Withdrawn at Staff Level" number from "Permit Application Tracking System", a withdrawal letter is sent to the applicant and the application is closed.

(2) by the staff if new information or design modifications are provided that enable the staff to issue a staff-level permit. Staff withdraws the item from the calendar and issues a staff permit to close the application.

(3) by the staff at the direction of the Director of Preservation if the status of the application changes with respect to scope and completeness.

(c) **Withdrawals from calendar (after having been heard).** If an application has been included on a Certificate of Appropriateness public hearing calendar and the hearing has taken place, the application can only be withdrawn by the applicant if he or she sends a letter to the Landmarks Preservation Commission indicating that the application is being abandoned as proposed. Upon receipt of this request staff will withdraw the item from the calendar, generate a "Withdrawn at Staff Level" number from "Permit Application Tracing System" and send the applicant a withdrawal letter to close the application. Where the application concerns, in whole or in part, the legalization of a violation, the Chair may, at his or her own discretion, reject the applicant's request to withdraw and the Commission may continue to consider and act on the application as submitted. Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a dissapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Subd. (c) amended City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

4 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-04 Final Actions.

No final determination or action will be made or taken except by concurring vote of at least six Commissioners.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 1 PRACTICE AND PROCEDURE-PUBLIC HEARINGS AND MEETINGS OF THE COMMISSION

§1-05 Submissions to the Record.

The Commission may, upon the adoption of a motion, close the hearing and leave the Record open on a particular item until a stated date to allow for the submission of additional written information. Submissions received after the stated date will be included in the Record provided they are received prior to the Commission's determination or action on the item.

The Commission will neither make a final determination nor take any final action on an item while the Record is open on that item.

HISTORICAL NOTE

Section in original publication July 1, 1991.

6 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-01 Application Signatures Necessary for Work Permits.

All application forms to perform any work on a designated landmark or on a property in a designated historic district must be signed by the owner of the property. An application for work on or in a cooperative building must be signed by the President or other appropriate officer of the Co-op Board. The signature of the managing agent of the cooperative building is not sufficient. An application for work on or in the areas and portions of a condominium building in common ownership must be signed by the President or other appropriate officer of the Condominium Association. An application for work on or in an individual condominium unit must be signed by the owner of that unit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

63 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-02 Master Plans and Authorizations to Proceed.

An owner of a designated property may apply for approval of a master plan when the proposal involves repetitive alteration of architectural features (such as windows, through-wall air conditioning installations, storefronts, etc.) and when those alterations are not planned to occur all at once, but rather in increments through time. A master plan can be approved by a Certificate of Appropriateness or by a Permit for Minor Work depending on the work which it covers.

In both cases the master plan sets a standard for future changes involving the architectural features in question and specifically identifies drawings and other documents which contain the approved design in detail. Once a master plan is approved and the owner wishes to move forward with a portion of the work covered by the master plan, a completed application form is filed with the Commission describing the scope of work (for example: 8 front windows on the 12th floor) and stating that the work will conform to the approved master plan drawings and other documents on file with the Landmarks Preservation Commission. The staff of the Preservation Department will review the application to ascertain that all proposed work is covered by a master plan, and will send the owner an "Authorization to Proceed" letter allowing the work to proceed. The Authorization to Proceed is sent prior to the commencement of the work and is contingent on adherence to the approved master plan drawings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-03 Process for Completing Application: Staff Withdrawal of the Application.

(a) All applications for work on designated properties received by the Landmarks Preservation Commission are assigned to a professional staff member in the Preservation Department who will handle the project. The staff person will review the proposal to ascertain whether the materials submitted are sufficient for a determination to be made. If the materials are sufficient, staff will certify the application as complete and issue the appropriate permit or take other action. If the completed application requires a Certificate of Appropriateness, staff will arrange for the item to be included in the next scheduled Certificate of Appropriateness public hearing calendar.

If the application requires further clarification and/or additional documentary materials, staff will contact the owner and/or applicant by telephone to discuss the proposal and, if necessary, arrange a meeting or site visit. Staff will follow the conversation up by providing a materials checklist calling out those supplementary materials required to certify the application as complete. If contact has been limited to a telephone conversation, the checklist will be mailed to the applicant. If a meeting is set up, the checklist may be supplied during the course of the meeting.

As soon as all the materials requested have been received, staff will certify the application as complete and process the application. However, if the required materials have not been received 60 working days from the date on the materials checklist, staff will send a follow-up letter to the applicant reminding him/her that the application is still incomplete and informing him/her that unless the materials required are received within the next 30 working days the application will be deemed withdrawn. A copy of the most recent materials checklist will be included with the letter. If

the applicant does not submit sufficient material within 90 days of the date on the materials checklist, staff should withdraw the application by sending a staff withdrawal letter including the docket number of the application and a "Withdrawn at Staff Level" number generated by "Permit Application Training System". The application will then be closed. The staff withdrawal letter will be sent to the owner and applicant with copies forwarded to the file, supervisor, and the Director of Preservation. Along with the withdrawal letter a blank "Application for Work on Designated Properties" will be included for the use of the applicant should he or she wish to re-apply.

(b) Notwithstanding the time periods set forth in subdivision (a), where an application seeks to legalize or cure a violation, an applicant must submit all materials required by the materials checklist within 20 working days of the date of the materials checklist. If the materials are not submitted, the staff shall send a follow-up letter that shall inform the applicant that the application may be withdrawn by the staff unless all required materials are submitted within 15 working days of the date of the follow-up letter. If the applicant fails to submit all required materials within 55 working days of the date of the first materials checklist, the staff may withdraw the application as set forth in subdivision (a). Withdrawal of an application to legalize or cure a violation, in whole or in part, shall be deemed a disapproval for purposes of service of a second or subsequent notice of violation pursuant to Administrative Code §25-317.1b(4)(a)(ii).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) designated City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Subd. (b) added City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Rules of the City of New York

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

63 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER A APPLICATION PROCEDURE

§2-04 Notices of Violation-New Applications.

The Landmarks Preservation Commission will not process an application for work on a designated property when an Landmarks Preservation Commission Notice of Violation is in effect against that property. A Notice of Violation in effect against that property indicates non-compliance with the Landmarks Law.

(a) Upon receipt of an application, staff must verify that no Notice of Violation is in effect against the property. In the event that a Notice of Violation is in effect, staff should proceed as follows:

Obtain copies of all Notices of Violation and Notices to Stop Work for the file.

Contact the owner/applicant to inform them that because a Notice(s) of Violation is (are) in effect staff cannot process an application for new work until the Notice(s) has (have) been rescinded.

Send a letter to the applicant explaining that staff cannot process the new application because a Notice(s) of Violation is(are) in effect against the property, that processing can only commence upon rescission of the Notice(s) or when the applicant begins to address the Notice(s). Along with the letter send copies of the Notice(s), an application form, and instructions for filing. Send copies of the letter to the Director of Preservation, Supervisor, and the Director of Enforcement.

(b) **Exceptions to this procedure.** Staff may issue permits for new work when a Notice of Violation is in effect in the following instances:

(1) The proposed work will correct a hazardous condition.

(2) The proposed work addresses the prevention of deterioration affecting the building, and the work will clearly further the continuing preservation of the building.

(3) A permit has been issued to correct work cited in a Notice of Violation, and an escrow agreement or other acceptable form of assurance has been established to provide a mechanism, acceptable to the Landmarks Preservation Commission, that ensures that the work approved under the permit to correct the Notice of Violation will be completed within a specified time period.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-11 Installation of Heating, Ventilating and Air Conditioning Equipment.

(a) **Introduction.** These rules are issued to assist the public in applying to the Landmarks Preservation Commission for approval of the installation of heating, ventilation and air conditioning equipment in buildings which are designated landmarks or are within designated historic districts. These rules enunciate Commission policy with respect to such installation and also explain the procedures required to apply for a permit.

The visual character of the exterior wall cladding, the pattern of window openings on the facades, and the ornamental elements used to articulate the exterior walls are important and integral parts of the design of buildings. In most historic buildings, these three elements were carefully combined to help define the style and character of the building. It is important to retain the visual integrity of the exterior walls, the regular pattern of the window bays, and the ornamental elements.

Therefore, the Commission, in making a determination on proposed installations of window, through-wall or roof- or yard-mounted HVAC equipment, evaluates the effect of the proposal on the aesthetic, historical and architectural values and significance of the landmark or of the building in an historic district. The Commission considers, among other matters, the architectural style of the building and the design, finish, material, method of installation and color of the proposed work.

These rules are based on the following principles:

(1) The distinguishing historical qualities or character of a building's structure or site and its environment should not be destroyed. The removal or alteration of any distinguishing architectural feature should be avoided.

(2) The visual integrity of the building's exterior walls should be maintained.

The goal of these rules is to facilitate the approval of appropriate HVAC installations in landmarked buildings. Certain installations can be approved at staff level in conformance with the procedures and criteria set forth in these rules. Proposed installations that do not conform to these rules require a Certificate of Appropriateness review by the full Commission in accordance with the Landmarks Law. Applicants are strongly encouraged to develop building master plans for the installation of HVAC equipment.

(b) **Definitions.**

Authorization to Proceed (ATP). The term "Authorization to Proceed (ATP)" shall mean a letter from LPC notifying an applicant that the proposed HVAC installations have been found to be in conformance with the provisions of an approved Master Plan.

Decorative masonry. The term "decorative masonry" shall mean terra cotta, cast-stone or natural stone (such as limestone, marble, brownstone or granite) facade areas and/or any ornamental feature which is a component of the facade such as belt courses, banding, water tables, cornices, corbelled brick work, medallions, enframements, and surrounds, and ornamental bonding patterns, e.g. tapestry brick or diaper patterns.

HVAC equipment. The term "HVAC equipment" shall mean window, through-wall, and yard mounted heating, ventilation, and air conditioning equipment, including window louvers, wall-mounted grilles and stove, bathroom and/or dryer vents.

Landmarks law. The term "landmarks law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC staff. The term "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Primary facade. The term "primary facade" shall mean a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court.

Secondary facade. The term "secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court.

Segmental or Curved Head Window. The term "segmental or curved head window" shall mean a window with a non-rectilinear sash or frame as illustrated and defined as a special window in Appendices A and C of Chapter 3 of these rules.

Significant feature. The term "significant feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and/or aesthetic character, or in the case of an historic district, that reinforces the special characteristics for which the historic district was designated.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Installations of HVAC equipment within window openings.** (1) No permit is required for installations of HVAC equipment which require only raising the lower sash of a double-hung window, or which require only opening a casement leaf, transom, hopper or awning window.

(2) A permit is required for all other types of HVAC equipment installations within windows in individual

landmarks and buildings in historic districts.

(i) Installations of HVAC equipment within window openings on primary facades of individual landmarks and building in historic districts.

(A) Residential buildings, including buildings originally designed as residences which were subsequently converted to other uses:

(a) Rowhouses, detached houses, carriage houses, small apartment buildings, tenements, and hotels: In buildings originally constructed as private residences or carriage houses, as well as small apartment houses and other types of multiple dwellings which are six stories or less in height and with a street frontage of forty (40) feet or less, the small scale, limited areas of plain masonry and potential for affecting the significant architectural and historic character of the buildings require the proposals for installations on primary facades be reviewed for a Certificate of Appropriateness ("COFA").

(b) Large apartment buildings and hotels: In large apartment buildings, hotels and other types of multiple dwellings which either have a street frontage of forty-one (41) feet or greater or which are seven or more stories in height, a Permit for Minor Work ("PMW") or Certificate of No Effect ("CNE") may be issued for permanent installations of HVAC equipment, louvers and vents in window openings if the proposal meets the following criteria:

(i) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(ii) the installation involves only removing glazing from one of the double-hung sash or one portion of a casement window or removing the window sash and retaining the window frame; and

(iii) the location of the unit forms part of a regular pattern of installations within window bays on the facade; and

(iv) the louver or vent will be mounted flush with the sash or directly behind the sash; and

(v) the louver or vent is finished to blend into the fenestration pattern; and

(vi) no significant architectural feature of the building will be affected by the installation.

(B) **Commercial and loft buildings:** In commercial and loft buildings originally designed to serve commercial/retail/warehouse uses, including cast-iron fronted buildings, department stores, banks and office buildings, a PMW or CNE may be issued for the permanent installation of HVAC equipment, louvers or vents if the proposal meets the following criteria:

(a) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(b) the proposal involves removing the glazing from all or part of the sash, or removing the window sash and retaining the window frame; and

(c) the location of the unit forms part of a regular pattern of installations in window bays on the facade; and

(d) the louver or vent will be mounted flush with the sash directly behind the sash; and

(e) the louver or vent will be finished to blend into the fenestration pattern; and

(f) no significant architectural feature of the building will be affected by the installation.

(ii) Installations of HVAC equipment within window openings on secondary facades in individual landmarks and buildings within historic districts. A PMW or CNE will be issued for the installation of HVAC equipment if the proposal meets the following criteria:

(A) the unit will be installed within an existing opening; and

(B) the window is not a special window as defined in Chapter 3, Appendix C of these rules except for segmental or curved head windows which do not possess any other characteristics of a special window; and

(C) the louver or vent will be finished to blend into the fenestration pattern; and

(D) no significant architectural feature of the building will be affected by the installation.

(d) **Installations of through-wall HVAC equipment.** (1) Through-wall installation of HVAC equipment on primary masonry facades.

(i) **Individual landmarks.** Proposals for installations on primary facades must be reviewed for a COFA.

(ii) **Buildings within Historic Districts.**

(A) Residential buildings, including buildings originally designed as residences which were subsequently converted to other uses:

(a) **Rowhouses, detached houses, carriage houses, small apartment buildings, tenements, and hotels.** In buildings originally constructed as private residences or carriage houses, as well as small apartment houses and other types of multiple dwellings which are six stories or less in height and with a street frontage of forty (40) feet or less, the small scale, limited areas of plain masonry and potential for affecting the significant architectural and historic character of the buildings require that proposals for installations on primary facades be reviewed for a COFA.

(b) **Large apartment buildings and hotels.** In large apartment buildings, hotels and other types of multiple dwellings which either have a street frontage of forty-one (41) feet or greater or which are seven or more stories in height, a PMW or CNE may be issued for installation of through-wall HVAC equipment if the proposal meets the following criteria:

(1) the proposed installation will be centered beneath the window opening, or, if the window opening is wide enough to accommodate more than one set of sashes, is placed to conform to the predominant existing pattern of installations; and

(2) the exterior grille will be a rimless type architectural grille; and

(3) the exterior grille will be mounted flush with the surrounding masonry; and

(4) the exterior grille will have a painted finish or a factory applied enameled finish which matches the color of the surrounding masonry; and

(5) the proposed location corresponds to an established regular pattern of installations; and

(6) the proposal calls for only the installation of one unit per room except for corner rooms in which the installation of one unit per facade will be permitted; and

(7) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(B) **Manufacturing and loft buildings.** Because of the architectural character of buildings of these types, installations proposed for primary facades of loft buildings originally designed to serve commercial/retail/warehouse uses, including cast-iron fronted buildings, department stores, and banks, must be reviewed for a COFA.

(C) **Other buildings.** For other buildings that do not fall into any of the previously described categories, the finding of appropriateness of through-wall HVAC installations on primary facades will be made on a case-by-case basis. Variations in design of these specialized buildings preclude the applicability of rules. Such specialized building types include churches and synagogues, hospitals, schools, and libraries.

(2) **Installations of through-wall HVAC equipment on visible secondary masonry facades.** A PMW or CNE may be issued for installation of through-wall HVAC equipment on a secondary facade of an individual landmark or of a building within an historic district if the proposal meets the following criteria:

(i) the unit will be (A) centered beneath or above a window opening if the vent or louver exceeds 144 square inches in surface area, or (B) installed below, above, or to the side of a window opening if the vent or louver is 144 square inches or less in surface area; or (C) installed in a uniform pattern on portions of secondary facades devoid of windows (variations from the predominant existing pattern on the building may be permitted if the applicant does not have interior space which would permit such installation in conformance with such pattern); and

(ii) the exterior grille will be mounted flush with the exterior wall except that if the vent or unit is 25 square inches or less in surface area, a projection forward of not more than 5 inches may be permitted if the projection does not have an adverse effect on the secondary facade; and

(iii) the exterior grille will be finished in a manner which approximates the color of the surrounding masonry; and

(iv) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(3) **Installation of HVAC equipment on non-visible secondary masonry facades.** A PMW or CNE may be issued for installation of through wall HVAC equipment on a secondary facade if the proposal meets the following criteria:

(i) the installation will not be visible from any public thoroughfare; and

(ii) the grille will be set flush with the masonry wall except that if the vent or unit is 25 square inches or less in surface area, a projection forward of not more than 5 inches may be permitted if the projection does not have an adverse effect on the secondary facade; and

(iii) no decorative masonry or other significant architectural feature of the building will be affected by the installation.

(4) A Certificate of Appropriateness is required for installation of through-wall HVAC equipment on facades made of materials other than masonry.

(e) **Installation of HVAC equipment in yards and areaways of landmarks and buildings in historic districts.** (1) A PMW or CNE may be issued for the installation of HVAC equipment in a location in the side or rear yard if the proposal meets the following criteria:

(i) the installation will not be visible from any public thoroughfare; and

(ii) the installation will not affect any significant architectural feature of the landmark or of a building in an historic district.

(2) Proposals for installations of HVAC equipment in front yards or in a location in a side or rear yard which is visible from a public thoroughfare require review for a COFA.

(f) **Master plans.** (1) A master plan for the installation of HVAC equipment over a period of time can be approved under a PMW if the plan is in conformance with these rules. After the permit is issued, proposed installations will require applications requesting an Authorization to Proceed (ATP).

(2) The master plan shall set forth standards for future changes and shall specifically identify such standards by drawings, including large scale details of installation specifications, specific unit locations and installation types.

HISTORICAL NOTE

Section amended City Record July 14, 1997 eff. Aug. 13, 1997. [See Note 1]

Section repealed and added City Record June 30, 1994 eff. July 30, 1994.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 14, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work on landmarks and buildings in historic districts and to permit Commission staff to issue permits for heating, ventilation, and air conditioning work that is in accordance with the proposed rules.

Rules of the City of New York

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

63 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-12 Rules for Installation of Awnings.

(a) **Introduction.** These rules are issued to assist building owners in applying to the Landmarks Preservation Commission ("Commission") for approval to install or repair awnings. The rules set forth Commission policy with respect to such installation and repair and explain the procedures and criteria required to apply for and receive a permit from the staff of the Commission. The goal of these rules is to facilitate the approval of appropriate awnings for designated buildings. Certain awning repairs and installations can be approved at staff level in conformance with the procedures and criteria set forth in these rules. Proposed installations or alterations that do not conform to these rules require a certificate of appropriateness review by the full Commission in accordance with the procedures and criteria set forth in §§25-305, 25-307 and 25-308 of the New York City Administrative Code.

These rules are based on the following principles:

(1) Awnings were historically employed for weather protection above residential windows and doors and for advertising as well as weather protection above storefronts.

(2) The location of awnings historically corresponded to the size and shape of the openings they covered, and awnings were installed directly above the wall openings they covered.

(3) Removal or damage of any significant feature is to be avoided in connection with the installation of awnings.

Applicants are encouraged to submit applications for master plans, pursuant to §2-02 of Title 63 of these Rules, for commercial portions of buildings with multiple storefronts or for residential buildings, which will permit the installation of awnings over a period of time in a single building or building complex.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Awning. "Awning" shall mean a metal frame clad with fabric attached over a window, door, porch opening or storefront to provide protection from the weather.

Facade. "Facade" shall mean an entire exterior face of a building.

Fixed awning. "Fixed awning" shall mean an awning with a nonretractable metal frame clad with fabric.

Historic fabric. "Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Lintel. "Lintel" shall mean the horizontal member or element above a door or window opening.

LPC staff. "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Primary facade. "Primary facade" shall mean a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court.

Residential awning. "Residential awning" shall mean any awning on a residential building and any awning on a commercial or mixed-use building except for storefront awnings.

Retractable awning. "Retractable awning" shall mean an awning attached to a frame which allows it to be extended out or folded or rolled back tight against the building facade.

Significant feature. "Significant feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and/or aesthetic character, or in the case of an historic district, that reinforces the special characteristics for which the historic district was designated.

Skirt. "Skirt" shall mean a bottom finishing piece of fabric that hangs from the lower edge of an awning.

Storefront. "Storefront" shall mean the first story area of the facade that provides access or natural illumination into a space used for retail or other commercial purposes.

Storefront opening. "Storefront opening" shall mean the first story area of the facade that is framed by piers or walls on the sides and a lintel or arch above, and that contains a storefront.

Transom. "Transom" shall mean the glazed area above a display window or door separated from the main window area or door by a transom bar.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Routine maintenance.** A permit is not required to undertake the following types of ordinary repair and maintenance work:

(1) Seasonal removal and installation of LPC approved window awnings.

(2) Fabric patching in a matching material.

(3) Minor repairs or adjustments to the rolling or folding arm mechanism of an awning's frame.

(4) Cleaning of awning material.

Ordinary repair and maintenance does not include replacement of, or repairs to, significantly damaged or deteriorated awning frames and armatures.

(d) **Recladding and retention of existing awnings.**

(1) LPC staff shall issue a certificate of no effect or a permit for minor work for recladding of existing awnings if the proposed recladding meets both of the following criteria: (i) The awning to be reclad was present at the time of designation or was previously approved by an LPC permit; and

(ii) The existing frame will be reclad in a material and finish that conforms to the criteria set forth in §2-12(e)(7)-(9) or 2-12(f)(9)-(11) of these rules.

(2) In the event a new storefront is being installed, an existing storefront awning in noncompliance with the criteria set forth in subsection (f) below cannot be retained unless the applicant can demonstrate to LPC staff that the new storefront installation will not require even the temporary removal of the existing awning or awnings.

(e) **Installation of new awnings on residential windows, doors and porches.** LPC staff shall issue a certificate of no effect or a permit for minor work for new awnings on residential windows, doors and porches if the proposed awning meets all of the following criteria applicable for such installation:

(1) Awnings installed on residential windows, doors and porches shall be retractable awnings.

(2) Awnings shall be installed at or below the lintel and shall conform to the size and shape of the window or door opening.

(3) The attachment of the awning will not cause the loss of, damage to, or hide or obscure any significant feature.

(4) Awnings shall project at an angle and be of a length, size and slope which are proportional to the size and height of the window or door.

(5) Awnings at terraces and architectural setbacks may extend over more than one opening, so long as the overall length of the awning is proportional to the size and length of the terrace or setback and the depth does not exceed the depth of the terrace or setback.

(6) Awnings on porches shall conform to the bay structure and proportions of the porch.

(7) All awnings on a residential building or on the residential portions of a mixed-use building must match in terms of fabric color and pattern if installed on primary or visible secondary facades.

(8) Awnings shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(9) Awning fabric shall consist of a solid color or vertical stripes that harmonize with the historic color palette of the building. No lettering or signage is permitted on residential awnings except for an address number on an awning over an entrance, and the numbers of such address shall be no greater than six inches in height.

(f) **Installation of new awnings on storefronts.** LPC staff shall issue a certificate of no effect or a permit for

minor work for new awnings on ground story storefronts, display windows and doorways if the proposed work meets all of the following criteria applicable for such installation:

(1) The awning must be retractable on Individual Landmarks, on storefront restorations approved by a restorative certificate of no effect (Title 63 §2-17(c)), and on buildings which were designed with integral retractable awning housings as part of the storefronts. In all other cases, the awning may be either retractable or fixed. If fixed, the awning shall have a straight slope and be open at the sides. If retractable, the awning shall have a straight or curved slope and may or may not have side panels. Retractable awnings may follow the curved configuration of the window or door openings over which they are installed. If a display window or doorway opening has an arched or segmental head, the awning must be retractable if it is installed at the head of the window, but may be fixed if it is installed at the rectilinear transom bar. Both retractable and fixed awnings may or may not have a skirt. Awning skirts must be unframed. The skirt height shall be proportional to the height and size of the awning.

(2) The attachment of the awning will not cause the loss of, damage to, or hide or obscure any significant feature.

(3) The awning shall be installed at or directly below the lintel or transom bar, except that the awning may be attached up to eight inches above the lintel where:

(i) a roll-down security gate that either was present at the time of designation or was previously approved by the Commission makes it impossible to install the awning at the lintel or transom bar; or

(ii) installing the awning at the lintel or transom bar will result in the lowest framed portion of the awning being less than eight feet above the sidewalk.

Where the awning is installed above the lintel, the awning encroachment above the lintel shall be the minimum required to accommodate the conditions described above in subparagraphs (i) and (ii) and in no instance shall exceed eight inches.

(4) In cases where the storefront itself projects from the facade, the awning must be attached to the projecting storefront below the storefront cornice or cap.

(5) The length of the awning shall not exceed the length of the storefront opening or the associated window opening, and the edges of the awning shall be aligned as closely as possible with the inside face of the principal piers of the storefront, or the window opening.

(6) The underside of the awning shall be open.

(7) The lowest framed portion of the awning shall be at least 8 feet above the sidewalk. The lowest unframed portion shall be at least 7 feet above the sidewalk.

(8) The awning shall project at an angle and be of a length, size and slope which are proportional to the size and height of the window or door.

(9) The awning shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(10) Signs, such as lettering or graphics, are permitted to be painted on the awning skirt only; no lettering or graphics shall be permitted on the sloped portion of the awning. The size of lettering shall be proportional to the height of the awning skirt.

(11) Awning fabric shall consist of a solid color or vertical stripes that harmonize with the historic color palette of the building.

(g) **Applicability.** The provisions of this section shall not apply to proposals to install awnings:

(1) On buildings subject to a building or district master plan, or other special rule approved by the Commission, governing the installation and characteristics of an awning; and

(2) On buildings, including historic modifications thereof, that did not originally or historically have awnings, including without limitation thereof public and institutional buildings such as houses of worship, schools, post offices and fire houses. Where the LPC staff reasonably believes that a building did not originally or historically have an awning, the LPC staff shall, at the applicant's request, calendar the proposal for a certificate of appropriateness public hearing. The applicant may request a meeting with the Director of Preservation or, in his or her absence, the Deputy Director, to discuss the LPC staff's interpretation of these rules.

HISTORICAL NOTE

Section repealed and added City Record Mar. 26, 1999 eff. Apr. 25, 1999. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 26, 1999:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rule is to assist the public in applying to the Landmarks Preservation Commission for approval of awnings on landmarks and buildings in historic districts and to permit Commission staff to issue permits for work that is in accordance with the rule.

Rules of the City of New York

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

63 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-13 Removal of Fire Escapes.

The following will clarify instances in which staff may issue a Certificate of No Effect (CNE) for the removal of fire escapes from designated buildings.

The removal of a fire escape requires either a CNE or a Certificate of Appropriateness (C of A). If the fire escape is a significant protected feature, then a C of A is required to approve its removal. However, staff may issue a CNE for a fire escape removal if it determines:

(a) that the fire escape is not a significant protected feature on the building based on the finding that:

(1) the fire escape is not original to the building, and

(2) the fire escape does not have architectural merit in itself, and

(3) the fire escape is not mentioned in the LPC designation report, and

(4) the building with the fire escape is not located within an historic district in which fire escapes are significant architectural elements that contribute to the special architectural and historic character for which that historic district was designated.

(b) That any damage to the facade will be repaired to match the adjacent fabric (patching any holes would be invisible enough to have "no effect" on the significant protected feature of the building);

(c) that the removal of the fire escape will not leave gaps, holes, or unsightly conditions on the facade. Occasionally, the installation of a fire escape requires the removal of architectural elements or portions of architectural elements (e.g. cornices). If the applicant is not prepared to remedy these conditions in connection with the removal of the fire escape, staff will have to make a judgment as to whether or not it would be desirable to allow the removal. If the applicant is willing to make restorative repairs, staff will have to decide whether these would require a Permit for Minor Work (PMW) or a C of A. It would be inappropriate to include these restorative repairs on a CNE since obviously they would have an effect on the significant protected features of the building. If the level of restoration requires a C of A, a CNE should not be issued for the removal, but rather the removal should be calendared for a public hearing with the restoration.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-14 Sandstone Restoration and Replacement.

The staff may issue a Permit for Minor Work for the restoration or replacement of sandstone/ brownstone elements and the following guidelines should be used in evaluating such proposals.

(a) For buildings that have especially fine ornament or distinctive or unique carvings where damage is minimal, the staff may issue a Permit for Minor Work for an application to consolidate the original significant fabric.

(b) For buildings where the decorative features are simple, not necessarily unique, stoops with damage to the treads or other kinds of damage to the facade, the staff may issue a Permit for Minor Work for an application to remove the original sandstone surfaces and replace them with a cementitious mix. In reviewing the application, the staff should find that:

(1) documentation or site inspection reveals that the existing brownstone surface is exfoliating, damaged or otherwise unsound;

(2) the proposal calls for the replication of the original texture, color, profiles and details;

(3) the proposal calls for damaged stone to be cut back to sound stone and the new surface be keyed into the sound stone and built up in successive layers using a cementitious mix with the top layer tinted and finished to match the

original sandstone texture and color. In some cases a sample patch should be requested for inspection and approval. The use of wire lath is never acceptable;

(4) the methods and materials proposed by contractors have been provided in the form of specifications, copies of contracts, or written in a letter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-15 New Window Openings.

Staff is authorized to issue a Certificate of No Effect for new window openings and sash when the following conditions are met:

(a) Visible window openings on secondary facades:

(1) the new window opening(s) and sash retain the same general shape and pattern as existing windows on the same facade, or, where there are no existing window openings, the new window opening will be located in a place and be of a size and shape where it can form the basis for a regular and consistent pattern, and the new sash does not detract from the sash on the primary facade;

(2) the location of new window openings is consistent and regular; and

(3) new window opening and sash do not detract from the significant architectural features of the building or adjacent buildings by virtue of their proximity to such features.

(b) For nonvisible or minimally visible window openings on secondary facades:

(1) the proposed window opening does not alter or destroy other protected features, nor does the proposed window opening or sash detract from such protected features by their proximity to such features.

(2) For purposes of this subsection (b), a new window opening shall mean (i) a window opening where none previously existed or (ii) a combination of two or more horizontally adjacent windows, provided such adjacent windows are, or will be once all of the approved work is complete, located in the same room. In addition to being combined, such horizontally adjacent windows may be enlarged in height by up to 10 percent of the height of the largest existing window opening being combined.

(3) For purposes of §2-15(b), the term "minimally visible" shall mean that the proposed window opening and sash are only partially visible from a public thoroughfare and that the window opening and sash are visible from such an angle and/or such a distance that they do not call attention to themselves and do not detract from the significant architectural features of the building or historic district.

(c) For purposes of this §2-15, the term "secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court and that does not possess significant architectural features.

HISTORICAL NOTE

Section repealed and added City Record Jan. 5, 2000 §1, eff. Feb. 4, 2000. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 5, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310.

The purpose of the adopted rules is to amend §§2-15, 3-01, 3-02 and 3-04 of title 63 of the Rules of the City of New York to allow the staff to issue certificates of no effect and permits for minor work for certain changes to existing window openings on secondary facades and the installation of new window sash and frames.

These amendments were included in the Regulatory Agenda.

Rules of the City of New York

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

63 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-16 Rear Yard Additions or Enlargements.

Standards for issuing staff level Certificates of No Effect (CNE) for rear yard additions or enlargements:

(a) Application is not for an addition that would extend to the rear lot line or substantially eliminate the presence of a rear yard.

(b) Rear of building has no significant architectural features which would be lost or damaged as a result of the construction of the addition.

(c) Proposed addition is not visible from a public thoroughfare or right of way.

(d) Other rear yard incursions exist within the block (in the case of buildings in Historic Districts).

(e) In the case of a rowhouse, the rear of the building (or buildings) involved retains the scale and character of an individual rowhouse.

(f) Proposed work complies with the Zoning Resolution and will not require special permit for a variance.

(g) In buildings with rear cornices, corbeled brickwork on the parapet, or other distinctive roof silhouettes, the rear addition does not rise to the full height of the building.

(h) The rear facade will not be removed from the entire width of the building, instead, existing openings are being modified to provide access into the addition. This approach retains original fabric and lessens structural intervention.

If all the above standards are met, a CNE may be issued; otherwise, consult with the Director of Preservation. Calendaring for a Certificate of Appropriateness public hearing may be required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-17 Restoration of a Building and Building Facade Features.

(a) **Introduction.** These rules are issued to assist building owners in applying to the Landmarks Preservation Commission for approval of applications to undertake the restoration of a building element or group of building elements on a designated property. The rules set out Commission policy with respect to such work. The goal of these rules is to facilitate and expedite the approval of restoration work proposed for designated properties. Proposed restoration work that does not conform to these rules requires a Certificate of Appropriateness review by the full Commission in accordance with the Landmarks Law.

(b) **Definitions.** As used in these Rules, the following terms have the following meanings:

"Facade" shall mean an entire exterior face of a building.

"Historic appearance" shall mean the visual appearance of a structure or site at a specific point in time after it has undergone alterations or additions which enhance or contribute to the building or site's special architectural, aesthetic, cultural or historic character.

"Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

"Landmarks Law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

"LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

"Original appearance" shall mean the visual appearance of a structure or site at approximately the time of its completed initial construction.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Restoration work.** The LPC staff will issue a Certificate of No Effect or a Permit for Minor Work for the restoration of building facade(s) or individual facade element(s) (including but not limited to roofs and cornices, stoops, storefronts, window and door openings, window and door enframements, ironwork, porches and siding) to their original or historic appearance if the staff determines that the proposed restorative work satisfies the following conditions:

(1) The basis for the design of the proposed restoration's authenticity is documented by:

(i) photographic evidence, or

(ii) physical evidence on the building, or

(iii) original or historic drawings or documents, or

(iv) matching buildings.

If there is no available documentary evidence as set forth in subsections (i)-(iv) and the applicant certifies that he or she (or a designated representative) has searched for historic drawings, documents or photographs at the resources listed in Appendix A of Chapter 2, the design may be based on that found in buildings of similar age and style that contain stylistic elements that follow a set pattern or type.

(2) The restoration would not cause the removal of significant historic fabric (such as Victorian period features on an earlier structure) that may have been added over time and that are evidence of the history and development of a building, structure, or site.

HISTORICAL NOTE

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record July 14, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of restoration work on landmarks and buildings in historic districts and to permit Commission staff to issue permits for

work that is in accordance with the proposed rules.

17 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 2-18

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-18 Temporary Installations.

Staff of the Landmarks Preservation Commission is authorized to issue a Certificate of No Effect (CNE) for proposals calling for the temporary installation of signs, banners or other temporary installations such as various forms of artwork or kiosks, if the following criteria are met:

(a) "Temporary Installation" is defined as an installation for sixty (60) days or less for signs and banners or one (1) calendar year or less for other temporary installations. The duration of any temporary installation authorized under this rule shall be specified in the CNE and shall be for a single period not to exceed sixty days for signs and banners or one year for other temporary installations; and

(b) the installation will cause no damage to protected architectural features of the property; and

(c) an acceptable plan and time schedule for the dismantling of the property has been submitted to the Commission as a component of the application. In the case of artwork, the applicant is also required to submit a written instrument signed by the artist and the building owner that evidences the owner's authority to remove the artwork when the temporary installation permit expires and that waives any protection under applicable federal or state law afforded to the artist or artwork that would prevent such removal at the expiration of the temporary permit, including but not limited to, the Visual Artists Rights Act of 1990, 17 U.S.C. 101 et seq. and Article 14 of the New York State Law on Arts and Cultural Affairs; and

(d) if the applicant is not a public or quasi-public agency, an escrow agreement or other adequate assurance acceptable to the Commission is provided to establish that a mechanism is available for the removal of the installation upon expiration of the permit should the applicant fail to remove the installation.

HISTORICAL NOTE

Section amended City Record Dec. 24, 1997 eff. Jan. 23, 1998. [See Note 1]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the amended rule is to assist the public in applying to the Landmarks Preservation Commission for approval of temporary installations on landmarks and in historic districts and to permit Commission staff to issue permits for certain temporary installations in accordance with the amended rules.

Rules of the City of New York

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

63 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-19 Proposed Construction of Rooftop Additions.

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

Demolition. "Demolition" shall mean dismantling or razing of all or part of an existing improvement.

Improvement. "Improvement" shall mean any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Landmarks Law. "Landmarks Law" shall refer to New York City Charter §3020 and chapter 3 of title 25 of the Administrative Code of the City of New York.

Landmarks Preservation Commission. "Landmarks Preservation Commission" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Mechanical equipment. "Mechanical Equipment" shall include, but not be limited to, heating, venting and air conditioning equipment, watertanks and their supporting structures, satellite dishes, stair and elevator bulkheads, screens, dunnages, baffles and other accessory installations but shall not include telecommunication equipment and conventional television antennas. For the purpose of this rule, mechanical equipment shall also include unenclosed decks, garden trellises, or associated railings.

Minimally visible. "Minimally visible" shall refer to any rooftop addition which when viewed from any public thoroughfare, projects into the maximum line of sight from such public thoroughfare by not more than 12 inches in height, or, due to its placement and size does not call attention to itself nor detract from any significant architectural features.

Occupiable space. "Occupiable space" shall mean a room or enclosure and accessory installations thereof, which are intended for human occupancy or habitation.

Permit. "Permit" shall mean any permit other than a notice to proceed issued by the Landmarks Preservation Commission in accordance with the Landmarks Law:

(a) "PMW" shall mean Permit for Minor Work as defined by §25-310 of the Landmarks Law.

(b) "CNE" shall mean Certificate of No Effect as defined by §25-306 of the Landmarks Law.

(c) "CofA" shall mean Certificate of Appropriateness as defined by §25-307 of the Landmarks Law.

Public thoroughfare. "Public thoroughfare" shall mean any publicly accessible right of way including, but not limited to a street, sidewalk, public park, and path.

Rooftop addition. "Rooftop addition" shall mean a construction or an installation of mechanical equipment and/or occupiable space situated on any structure's roof.

Significant architectural feature. "Significant architectural feature" shall mean an architectural component of a building that contributes to its special historic, cultural and aesthetic character, or that in the case of an historic district reinforces the special characteristics for which the district was designated.

Terms not otherwise defined in this section shall have the meaning given them in the Landmarks Law.

(b) **Applications for proposed work.** Each application filed with the Landmarks Preservation Commission for proposed construction of a rooftop addition shall be accompanied by:

(1) documentation, including photographs, which accurately depicts the site of a proposed rooftop addition; and

(2) sight line studies for the purpose of determining the visibility of the rooftop addition from a public thoroughfare including the point of maximum visibility (see supplementary instructions for filing for rooftop additions); and

(3) mechanical equipment with respect to any application for rooftop additions for occupiable space, a current objections sheet from the Department of Buildings.

(c) **Mechanical equipment rooftop additions to be constructed on a structure which is an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark of six stories or less in height which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is not visible from a public thoroughfare.

(2) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark of seven stories or greater in height which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is either not visible from a public thoroughfare or is only minimally visible from a public thoroughfare.

(d) **Occupiable space rooftop additions to be constructed on a structure which is an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on a structure which is an individual landmark which:

(i) consists of occupiable space; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which such rooftop addition is to be constructed; and

(iii) is not visible from a public thoroughfare; and

(iv) has no outstanding objection for use or bulk listed on the objections sheet for such structure.

(e) **Rooftop additions to be constructed on any structure within a designated historic district, other than an individual landmark.**

(1) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on any structure within a designated historic district, other than an individual landmark, which:

(i) consists solely of mechanical equipment; and

(ii) does not result in damage to, or demolition of, a significant architectural feature of the roof of the structure on which the rooftop addition or installation is to be constructed; and

(iii) is either not visible from a public thoroughfare or is only minimally visible from a public thoroughfare.

(iv) does not adversely affect significant architectural features of adjacent improve- ments.

(2) The Landmarks Preservation Commission shall issue a CNE for any rooftop addition to be constructed on any structure within a designated historic district, other than an individual landmark, which:

(i) consists of occupiable space; and

(ii) does not result in any damage to, or demolition of, a significant architectural feature of the roof of the structure on which it is constructed; and

(iii) is not visible from a public thoroughfare; and

(iv) does not adversely affect significant architectural features of adjacent improvements; and

(v) has no outstanding objection for use or bulk listed on the objections sheet for such structure.

(f) The Landmarks Preservation Commission shall consider any application for a proposed rooftop addition that

does not meet the criteria for a CNE set forth above as a request for a CofA and shall hold a public hearing on such application.

(g) **Applicability.** (1) This rule shall not be construed to apply to telecommunications equipment or conventional television antennas.

(h) **Application Procedure.** (1) All applications received by the Landmarks Preservation Commission will be docketed and reviewed for completeness. The applicant will be notified if additional documentation is required.

(2) When the application is complete, a staff member will review the application for conformance with these rules. Upon determination that the criteria of the rules have been met, a CNE will be issued.

(3) If the criteria for a CNE have not been met, the applicant will be given the opportunity to pursue a Certificate of Appropriateness and may request a meeting with the director of preservation to discuss the interpretation of the rules. The applicant may also request a meeting and review by the chair of the commission.

(4) The decision of whether to approve an application for a Certificate of Appropriateness is made by an affirmative vote of at least six commissioners following a public hearing.

HISTORICAL NOTE

Section amended City Record Dec. 24, 1997 eff. Jan. 23, 1998. [See Note 1]

Section added City Record Aug. 27, 1993 eff. Sept. 26, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 1997:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for approval of proposed rooftop additions on landmarks and buildings in historic districts and to permit Commission staff to issue permits for certain rooftop additions in accordance with the amended rules.

Rules of the City of New York

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

63 RCNY 2-20

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-20 Bracket Signs in the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts.

(a) **Introduction.** The large commercial buildings that substantially define the character of the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts historically had a wide variety of signage, including rigid projecting signs. These signs, known as "bracket signs" extended out perpendicularly from the building face and typically had signage on both sides of the sign.

(b) **Definitions.** As used in this §2-20, the following words shall have the following meanings:

Armature. "Armature" shall mean a metal structural support for a rigid projecting sign. The armature may support the bracket sign by means of one or two projecting arms.

Bracket Sign. "Bracket Sign" shall mean a rigid outdoor sign, with two display faces, installed perpendicular to a building facade and hanging from an armature, used as an announcement for an establishment in the building, consisting of the rigid display faces and all letters, words, numerals, illustrations, decorations, trade marks, emblems, symbols or their figures or characters associated with the name of the establishment that are applied to the faces. In addition, a bracket sign may consist solely of an outline of a shape and/or letters intended to act as a symbol or sign for the establishment.

CNE. "CNE" shall mean a Certificate of No Effect as defined by §25-306 of the New York City Administrative Code.

Establishment. "Establishment" shall mean a manufacturing, commercial or retail business or profession.

Facade. "Facade" shall mean an entire exterior face of a building.

LPC. "LPC" shall mean the Landmarks Preservation Commission.

LPC staff "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

(c) **Installation of bracket signs.** The LPC staff shall issue a CNE for a bracket sign if the proposed work meets all of the following criteria:

(1) The armature shall be installed below the second story within the storefront opening or on the flat face of a plain masonry pier and shall be mechanically fastened into the storefront infill or into the mortar joints of a plain masonry pier, and such installation shall neither damage nor conceal any significant architectural features of the building.

(2) The armature shall be a dark finished metal and shall be simply designed.

(3) The display faces of the bracket sign may be made of wood or metal. If the bracket sign has display faces, the letters, words, numerals, illustrations or graphics, etc. may be painted or applied onto the display faces, and may be raised slightly from the surface. The overall width, as measured from face to face, shall not exceed 2 inches, and, if there are raised letters, illustrations, etc. the bracket sign shall not exceed a width of three inches as measured from the outside plane of such raised letters or illustrations. The display faces and the letters, words, numerals, illustrations or graphics, etc. shall be of a color or colors that do not detract from the significant architectural features of the building or neighboring buildings. No neon or other vividly bright colors shall be permitted.

(4) The bracket sign shall not be internally illuminated, nor shall such sign have neon or L.E.D. (Light Emitting Diode) lighting of any kind, nor shall any lighting fixture or mechanism be attached to the armature.

(5) The bracket sign may be fixed or may move freely from its points of attachment to the armature, but in no event shall the bracket sign be made to move by mechanized or controlled means.

(6) Number of bracket signs for ground floor establishments.

(i) Except for signs subject to subparagraph (iii) below, one bracket sign per ground floor establishment shall be permitted.

(ii) In buildings with more than one ground floor establishment, one sign per establishment may be installed, provided that there is no more than one sign per 25 feet of building facade fronting on a street, and further provided that the size, design, placement, materials and details of all of the armatures match. The placement of the bracket sign on the building shall be in close proximity to the establishment that is identified on the bracket sign.

(iii) A ground floor establishment with a corner storefront may have one bracket sign on each building facade with at least 25 feet of street frontage, provided that each facade has a primary entrance and each bracket sign is located in close proximity to an entrance, but in no event shall more than one bracket sign be located within 20 feet of the corner of the building.

(7) Bracket signs for upper story establishments. A single armature for a bracket sign for an upper story establishment or establishments may be installed adjacent to the building entrance for such upper story establishments.

This armature may hold one sign for each upper story establishment, provided such signs hang vertically underneath one another on the same armature, and further provided that in no event shall the total dimensions of such signs, taken together, exceed the size requirements specified in paragraph (8) below.

(8) The size of the bracket sign shall conform to the requirements of the Zoning Resolution, but in no event shall the size exceed 24 inches by 36 inches, oriented horizontally or vertically. Novelty shapes, such as circles, polygons and irregular shapes, may be permitted provided such shapes fall within the above dimensions.

(9) The projection of the bracket sign and armature beyond the property line shall conform to the requirements of the Zoning Resolution and Building Code, but in no event shall extend more than 40 inches from the facade.

(10) The bracket sign shall be installed so that the lowest portion of the sign is at least ten (10) feet above the sidewalk.

(11) The establishment seeking approval for a bracket sign shall not, for the same building, already be utilizing an LPC-approved, grandfathered or unapproved flagpole and banner, nor shall it have approval from the LPC for installing a new flagpole and banner on the same building.

(12) In approving an application for a bracket sign, the staff shall consider the overall amount of staff and Commission approved signage for the storefront. If the staff determines that the overall amount of signage with the proposed bracket sign is excessive and will detract from the architectural features of the building, the staff shall require that other types of existing or proposed staff approved or approvable signage, including but not limited to signs on awning skirts and signage applied to the storefront glazing, be eliminated or reduced.

(13) The application is to install the bracket sign on a building designed as a commercial or loft building and zoned for commercial use and located within the Tribeca East, Tribeca West, Tribeca North, Tribeca South, SoHo Cast-Iron, NoHo, and Ladies' Mile Historic Districts.

HISTORICAL NOTE

Section added City Record May 23, 2001 eff. June 22, 2001. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2001:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and §25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The purpose of these rules is to assist the public in applying to the Landmarks Preservation Commission for approval of bracket signs on landmarks and buildings in historic districts and to permit Commission staff to issue permits for work that is in accordance with these rules.

Rules of the City of New York

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

63 RCNY 2-21

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER B SPECIFIC ALTERATIONS

§2-21 Rules Relating to Installation of Public Pay Telephones.

(a) **Introduction.** Public pay telephones have been part of the city's street scape for half a century. First introduced in the 1950s pursuant to a franchise agreement with the city, legally permitted public pay telephones contribute to the urban experience as well as provide an important communication link for business, pleasure and public health and safety. These public pay telephones have traditionally had a quiet presence on the street scape that allowed for their identification without calling undue attention to themselves. The provisions set forth below are intended to ensure that public pay telephones installed in areas under the jurisdiction of the Landmarks Preservation Commission are installed in a manner that does not damage or destroy historic fabric and that the design and placement of such phones shall not call undue attention to themselves or detract from the significant architectural features of an improvement or a historic district or adversely affect a historic district's distinct sense of place.

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

(1) "Curbfront" shall mean the sidewalk curb that divides the sidewalk from the roadway.

(2) "Public pay telephone" or "PPT" shall be defined by §23-401(f) of the Administrative Code of the City of New York.

(3) "PPT Enclosure" shall be defined as any associated housing or enclosure that partially or fully surrounds a PPT,

and including an associated pedestal, which has been approved by the Art Commission.

(4) "PPT Franchise Agreement" shall mean a franchise granted by the City pursuant to the revised solicitation issued by the Department of Information Technology and Telecommunications ("DoITT") on June 9, 1997 pursuant to Resolution No. 2248 or any subsequent solicitation with a similar purpose whether or not such subsequent solicitation includes all or part of the components of the June 9, 1997 solicitation.

(c) **Approval of PPT Enclosure Design and Installation.**

(1) No application to the Commission, and no certificate, approval, permit or report shall be required for a proposal to install a PPT Enclosure if such proposal meets the following criteria:

(i) The PPT Enclosure is proposed to be installed no farther than 24 inches and no closer than 18 inches of the curbfront in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution;

(ii) Each PPT Enclosure shall be designed to be inconspicuous and to not call undue attention to itself, and shall have an exterior dimension no greater than 35" wide × 44" long × 90" high. A maximum of two PPTs may be installed in-line together, but in such instance the enclosure shall be no grerater than 35" wide × 88" long × 90" high. The height limitation shall include the height of a mast if one is installed. The PPT Enclosure may have clear glazing panels and shall be rectilinear if the PPT Enclosure is designed to have advertising panels;

(iii) The PPT Enclosure shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PPT;

(iv) The PPT Enclosure shall not be installed in front of an improvement designated as a landmark;

(v) The telephone and power lines to and from such PPT Enclosure, or any conduit containing such lines, shall not be visible;

(vi) The nonglazed portion of the PPT Enclosure shall be a dark brown, dark green, black or dark grey color, or is uncolored stainless steel or clear-finished aluminum. If the PPT Enclosure is less than 15 inches by 36 inches, all portions of the PPT Enclosure shall be stainless steel or clear-finished aluminum;

(vii) If the PPT Enclosure has advertising panels, the advertising panels shall be limited to two side panels, each of which is not larger than 27" wide × 57" high. There shall be no advertising panel on the rear of the PPT Enclosure facing the street. The advertising panels shall not be illuminated in any fashion. Advertising shall be limited solely to the PPT Enclosure. No advertising shall be permitted on a PPT Enclosure that is smaller than 27" wide × 57" high. No PPT Enclosure shall have any light emitting diode (L.E.D.) lettering, design or advertising. In addition to the above, a PPT Enclosure may identify the name or logo of the owner of the PPT and the fact that it is a public telephone. Where such identification is illuminated, it shall be illuminated internally from behind the lens, be limited to the top two inches of the PPT Enclosure, and may occur on all sides of the PPT Enclosure; and

(viii) The proposed PPT installation meets all applicable terms, conditions and requirements of the PPT Franchise Agreement, and all applicable distance, clearance and other siting requirements set forth in Title 67 of the Rules of the City of New York.

(2)(i) All other proposals to install a PPT Enclosure shall be reviewed and approved by the Landmarks Preservation Commission by a certificate of appropriateness public hearing, report, permit for minor work or certificate of no effect, as appropriate.

(ii) Application Procedures for proposals to install a PPT Enclosure requiring a certificate, permit or report. An

application form shall be filed for each proposed PPT Enclosure. Notwithstanding the requirements of §2-01 of Title 63 of the Rules of the City of New York, the application form for the installation of a PPT Enclosure shall be signed by the person who owns the PPT or the agent or principal of such person, or any other person authorized to apply for a permit to install a PPT pursuant to the PPT Franchise Agreement or Title 67 of the Rules of the City of New York. No advertising shall be permitted on non-curbside PPTs or PPT Enclosure.

(3) Nothing in this rule shall be interpreted to obviate the need to obtain all necessary approvals from the Department of Information Technology and Telecommunications for all installations of PPT Enclosures.

HISTORICAL NOTE

Section added City Record Apr. 21, 2005 eff. May 21, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 21, 2005:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and improvements located within historic districts. The Commission issues approvals for work on such designated landmarks and within such districts which, following procedures stated in §§25-305, 25-306, 25-307, 25-308, 25-310 and 25-318 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307, 25-310, 25-318.

The purpose of the proposed rule is to set forth the Landmarks Preservation Commission's regulatory policies regarding the installation of public pay telephones.

Rules of the City of New York

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

63 RCNY 2-31

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-31 Definitions.

As used in these Rules, the following terms shall have the following meanings:

Architect. "Architect" shall mean individual, partnership, corporation or other legal entity licensed to practice the profession of architecture under the education law of the State of New York.

CNE. "CNE" shall mean Certificate of No Effect as defined by §25-306 of the Landmarks Law.

Day. "Day" shall mean any day other than a Saturday or Sunday or legal holiday.

Engineer. "Engineer" shall mean any individual, partnership, corporation or other legal entity licensed to practice the profession of engineering under the education law of the State of New York.

Landmarks Law. "Landmarks Law" shall refer to New York City Charter §3020 and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks Preservation Commission. "Landmarks Preservation Commission" shall mean the Commission acting in its agency capacity to implement the Landmarks Law.

Notice of Violation. "Notice of Violation" shall mean a notice from the Landmarks Preservation Commission that

work on a landmark site or within an historic district was performed without a permit or was not performed in accordance with a permit issued by the Landmarks Preservation Commission.

Story. "Story" shall be defined as a habitable floor level, including a basement but not including a cellar.

Terms not otherwise defined in these rules shall have the meaning given them in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

22 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 2-32

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-32 Expedited Review Procedures.

(a) **General.** An applicant may request that an application for interior work above the second story on any landmark or building within an Historic District, other than an application for interior work on a part of the building which has been designated an interior landmark, be reviewed on an expedited basis. Expedited review is predicated upon the statements and representations of the architect or engineer and the owner and upon the satisfaction of certain terms and conditions, all as set forth in this §2-32.

(b) **Work eligible for expedited review.** Interior work which is to be performed above the second story and which does not involve any change to, replacement of, or penetration of, an exterior wall, window, skylight or roof, including but not limited to penetrations, replacements or changes for ducts, grilles, exhaust intakes, vents or pipes, may qualify for an expedited review.

(c) **Conditions to expedited review.** Each of the following conditions must be satisfied in order to obtain an expedited review:

(1) The work shall be eligible work as described in §2-32(b) above.

(2) The application for which an expedited review is requested shall be accompanied by a completed Landmarks Preservation Commission expedited review form which shall include:

(i) a statement signed and sealed by the architect or engineer that:

(A) the architect or engineer has prepared, or supervised the preparation of, the plans and specifications submitted with the application;

(B) all work shown on such plans and specifications is:

(a) interior work only,

(b) to be performed only above the second story,

(c) not to be performed on any portion of a space designated as an Interior Landmark,

(d) does not involve any change to, replacement of, or penetration of, a window, skylight, exterior wall or roof or any portion thereof;

(e) for floors 3-6 does not involve a dropped ceiling or a partition which is less than a minimum of 1'-0" back from interior window sill or frame whichever is further from the glass.

(C) that where there are associate architects or engineers, that they likewise join in the request for an expedited review of the application;

(D) that the architect or engineer and associate architects or engineers, if any, are aware that the Landmarks Preservation Commission will rely upon the truth and accuracy of the statements contained in the application made by them, and any amendments submitted in connection therewith, as to compliance with the provisions of the Landmarks Law and these rules;

(ii) a sworn statement executed by the owner of the property that:

(A) the proposed work described is of the type described in §2-32(b);

(B) no change to, or modification of, the proposed work shall be undertaken by the owner, his or her architect or engineer or any other agent of the owner without the prior approval of the Landmarks Preservation Commission; and

(C) the necessary remedial measures to obtain compliance will be taken, if the same becomes necessary;

(3) No "Notice of Violation" from the Landmarks Preservation Commission shall be in effect against the property which is the subject of the proposed work for which an expedited review is requested; and

(4) The application is complete in all other respects.

(5) The architect or engineer and associate architects or engineers, if applicable, have not been excluded by:

(i) the Chair of the Landmarks Preservation Commission from the procedures for expedited review pursuant to §2-34 of these rules; or

(ii) the Commissioner of the Department of Buildings from the Department's procedures for limited supervisory check of applications and plans set forth in 1 RCNY §21-02.

(d) **Issuance of permit.** If all conditions to an expedited review have been satisfied, the Landmarks Preservation Commission shall:

(1) issue a CNE to the applicant; and

(2) shall perforate all drawings accompanying such application to indicate approval thereof.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

Subds. (a), (b) amended City Record Dec. 29, 1993 eff. Jan. 28, 1994.

Subd. (c) par 2 amended City Record Dec. 29, 1993 eff. Jan. 28, 1994.

23 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 2-33

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-33 Effect of Failure to Meet Conditions for an Expedited Review.

The Landmarks Preservation Commission shall notify any applicant who has requested an expedited review of his or her application under these rules of the reason for their failure to satisfy the conditions for expedited review.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

Rules of the City of New York

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

63 RCNY 2-34

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-34 Remedies for False Statements and Procedures for Action.

(a) **Grounds for action.** (1) The Chair of the Landmarks Preservation Commission may exclude any architect or engineer from the procedures for expedited review of applications if the Chair of the Landmarks Preservation Commission finds that:

(i) In connection with the Landmarks Preservation Commission expedited review form described in §2-32(c)(1) of these rules the architect or engineer has:

(A) knowingly or negligently made any false or misleading statement; or

(B) knowingly or negligently omitted a statement or failed to state a material fact; or

(C) knowingly or negligently falsified or allowed to be falsified any fact; or

(D) willfully induced another person to do any of the above; or

(ii) A "Notice of Violation" or "Notice to Stop Work" has been issued by the Landmarks Preservation Commission against work performed pursuant to any plans, prepared by or under the supervision of such architect or engineer, and such architect or engineer knew, or had reason to know, that the work performed pursuant to such application, plan, certification, or report was not carried out in accordance with approved plans or exceeded the scope of such approved

plans and such architect or engineer failed to act to stop such work and/or correct such work.

(2) The powers, rights and remedies of the Landmarks Preservation Commission set forth in this §2-34(a) are non-exclusive and shall not be deemed to limit or supersede any other power, right or remedy of the Landmarks Preservation Commission.

(b) **Procedures.** (1) Written notice of a preliminary determination, together with the basis for such action to exclude from expedited review shall be served on the Architect or Engineer of record pursuant to the provisions of New York State Civil Practice Law and Rules §308.

(2) The Architect or Engineer notified under §2-34(b)(1) shall be entitled to, and scheduled for, a hearing on the preliminary determination in accordance with §2-34(c) if written objection to the preliminary determination and the grounds for such objection are submitted to the Chair of the Landmarks Preservation Commission within fifteen (15) Days after the date that the notice of preliminary determination is served.

(3) If no hearing is requested pursuant to §2-34(b)(2) above, the preliminary determination of the Chair of the Landmarks Preservation Commission shall be deemed confirmed and shall become final and effective on the sixteenth (16) Day after the preliminary notice of determination is served.

(4) If after a hearing in accordance with §2-34(c), the Chair of the Landmarks Preservation Commission confirms the preliminary determination, the Chair shall notify the Architect or Engineer of such decision and such notice shall include a written statement indicating the reason for his or her determination.

(5) On or after the effective date of the final determination to exclude an Architect or Engineer from participation in expedited review procedures all of the plans prepared by or under the supervision of such Architect or Engineer shall be subject to full review by the Landmarks Preservation Commission.

(c) **Hearing.** (1) Any hearing described in §2-34(b)(2) will be held at, and conducted by the Office of Administrative Trials and Hearings in accordance with their rules and procedures.

(2) The Architect or Engineer may be represented by counsel and may present evidence in his or her behalf. A transcribed or tape-recorded record shall be kept of the hearing.

(3) The Chair of the Landmarks Preservation Commission shall notify the respondent of the final determination within ten (10) Days after the receipt of the findings of fact from the Office of Administrative Trials and Hearings on such matters. The determination of the Landmarks Preservation Commission shall be supported by substantial evidence.

(d) **Review of Determination.** At the expiration of two (2) years from the date of the initial determination to exclude an Architect or Engineer from participation in the procedures for expedited review of applications, and at intervals of no more than six months thereafter, upon request of the Architect or Engineer, the Chair of the Landmarks Preservation Commission shall reexamine such determination. If the Architect or Engineer has not committed any of the acts described in clause (2) of §2-34(a) above during such period, the Chair of the Landmarks Preservation Commission may rescind such determination.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

25 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 2-35

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 2 ALTERATION OF LANDMARK AND HISTORIC DISTRICT BUILDINGS

SUBCHAPTER C EXPEDITED REVIEW OF CERTAIN APPLICATIONS FOR CERTIFICATES OF NO EFFECT

§2-35 Miscellaneous.

Any application submitted on or after the effective date hereof shall be subject to these Rules.

HISTORICAL NOTE

Section added City Record Jan. 17, 1992 eff. Feb. 16, 1992.

Rules of the City of New York

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

63 RCNY 2 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A RESOURCES FOR HISTORIC PHOTOGRAPHS & DRAWINGS

APPENDIX A RESOURCES FOR HISTORIC PHOTOGRAPHS & DRAWINGS

ADDRESS:_____

Borough:_____ Block:_____ Lot:_____

ALL APPLICANTS (OR THEIR DESIGNATED REPRESENTATIVES) MUST CHECK FOR HISTORIC PHOTOGRAPHS & DRAWINGS AT THE MUNICIPAL ARCHIVES, 31 CHAMBERS STREET, SUITE 103, (212) 788-8580.

Date checked _____

IN ADDITION, APPLICANTS MUST CHECK THE OTHER RESOURCES LISTED FOR THE APPLICABLE BOROUGH BELOW:

Brooklyn

Department of Buildings-Municipal Building, 208-42 Joralemon Street, 8th Floor (718) 802-3675

Date checked _____

New York Public Library-5th Avenue & 42nd Street (212) 930-0800

Date checked _____

Brooklyn Historical Society-128 Pierrepont Street (718) 624-0890

Date checked _____

Bronx

Department of Buildings-1932 Arthur Avenue, 8th Floor (718) 579-6982

Date checked _____

New York Historical Society-170 Central Park West, Manhattan (212) 873-3400

Date checked _____

Manhattan

Department of Buildings-60 Hudson Street, 5th Floor (212) 312-8990

Date checked _____

New York Historical Society-170 Central Park West (212) 873-3400

Date checked _____

New York Public Library-5th Avenue & 42nd Street (212) 930-0800

Date checked _____

Queens

Department of Buildings-126-06 Queens Boulevard, Kew Gardens (718) 520-3415

Date checked _____

Queens Borough Public Library, 89-11 Merrick Blvd., Jamaica (718) 990-0770

Date checked _____

Staten Island

Department of Buildings-Borough Hall, 10 Richmond Terrace (718) 816-2312

Date checked _____

Staten Island Institute of Arts & Sciences-75 Stuyvesant Place (718) 727-1135

Date checked _____

I certify that I have searched for historic photographs and/or drawings of the subject premises at the resources which are relevant to the subject premises, and that I was unable to locate any historic photographs or drawings of the premises.

APPLICANT:_____ SIGNATURE:_____

HISTORICAL NOTE

Appendix added City Record July 14, 1997 eff. Aug. 13, 1997.

Rules of the City of New York

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

63 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-01 Introduction.

(a) These rules are issued to assist the public in applying to the Landmarks Preservation Commission for approval of repair, rehabilitation, restoration or replacement of windows in buildings that are designated landmarks or are within designated historic districts. These rules, which hereinafter will be referred to as "guidelines," enunciate Commission policy with respect to such repair, rehabilitation, restoration or replacement and also explain the procedures required to apply for a permit.

(b) Windows are an important and integral part of the design of most buildings. They typically comprise 30% to 40% of the surface area of a building's principal facade. In most historic buildings the window sash, window framing, and the architectural detail surrounding windows were carefully designed as an integral component of the style, scale and character of the building. It is important to retain the configuration, operation, details, material and finish of the original window as well as to maintain the size of openings, sills, decorative moldings, and the sash itself.

(c) Therefore, the Commission, in making a determination on proposed repair, rehabilitation, restoration or replacement of windows, evaluates the effect of the proposal on the aesthetic, historical and architectural values and significance of the landmark or of the building in an historic district. The Commission considers, among other matters, the architectural style of the building and the design, texture, material and color of the proposed work.

(d) These window guidelines are based on the following principles:

(1) The distinguishing original qualities or character of a building's structure, or site and its environment, should

not be destroyed. The removal or alteration of any distinctive architectural feature should be avoided whenever possible.

(2) Deteriorated architectural features including windows should be repaired rather than replaced whenever possible.

(3) If replacement is necessary, the new window should match the original or historic window in design and other visual qualities.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (d) par (3) amended City Record Jan. 5, 2000 §6, eff. Feb. 4, 2000. [See T63 §2-15 Note 1].

63 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-02 Repairs, Rehabilitation and Restoration.

(a) **Repairs.** Deteriorated windows can often be repaired and made sound and fully operational. A permit is not required to undertake ordinary repairs including:

(1) Replacement of broken glass, together with replacement of associated moldings, muntins and glazing compound with material of matching characteristics.

(2) Scraping, priming and repainting of window sash and/or frame to recoat with same color and finish that exist at the time such work is undertaken.

(3) Caulking around frames and sill.

(4) Repair and replacement of window hardware, including pulley chains.

(5) Installation of weatherstripping.

(6) Straightening of metal window members.

(7) Rebuilding of portions of sills, sash and other window members, using the same material and to the same configuration, size and shape, limited to the following:

(i) up to 100% for sills, bottom sash rails and parting strips;

(ii) up to 40%, measured separately, for trim, moldings and other sash members.

(8) Consolidating wood members.

(b) **Rehabilitation and restoration.** A permit is required for:

(1) work that does not meet the requirements of subsection (a) above;

(2) changes in configuration; or

(3) any change in the shape or size of any member.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (8) amended City Record Jan. 5, 2000 §4, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (b) amended City Record Jan. 5, 2000 §5, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Rules of the City of New York

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

63 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-03 Storm Windows.

(a) The installation of secondary glazing units ("storm windows"), either interior or exterior, will be allowed under the following conditions:

(1) A permit is not required for installation of interior storm windows provided that:

(i) The installation has no mullions, muntins or wide frames that are visible from the exterior of the building; and

(ii) The glazing consists of clear glass or other transparent material. If these conditions are not met a permit will be required.

(2) A permit is required for installation of exterior storm windows.

(b) Exterior storm windows shall fit tightly within window openings without the need for subframe or panning around the perimeter. The color of frames of exterior storm windows shall match the color of the primary window frame. Clear glass only will be permitted. The storm sash shall be set as far back from the plane of the exterior wall surface as practicable. Muntins shall not be permitted. Meeting rails may be used only in conjunction with doublehung windows and shall be placed in the same relative location as in the primary sash.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-04 Replacement of Sash and Frames.

If the windows have deteriorated to a condition that warrants replacement, new windows will be permitted under the following conditions:

(a) A permit is required for the installation of new sash in existing frames. In cases where the sash is deteriorated to a point precluding reasonable repair, rehabilitation or restoration, replacement sash may be installed subject to the issuance of a permit. In determining whether sash cannot be repaired, the Landmarks Preservation Commission will consider the percentage of the window that is deteriorated, the practicality of repair, trade practice and such other factors as the LPC may deem appropriate. The new sash shall match the existing sash in dimensions, configuration, operation, details, material, and finish except as provided below. If the rehabilitation of frames is required in conjunction with an application for new sash, that work shall be part of the application.

(b) A permit is required for the installation of new sash and frames in landmarks and buildings in historic districts.

(c) **New sash and frames in primary facades:**

(1) **Individual landmarks:**

(i) If historic windows have deteriorated to a point precluding reasonable repair, rehabilitation or restoration, based on a condition report submitted by the applicant, or a field inspection by the staff, or other evidence, including the percentage of the window that is deteriorated, the practicality of repair, trade practice and other factors, replacement

windows may be approved if they match the historic windows in terms of:

(A) configuration,

(B) operation,

(C) details,

(D) material, and

(E) finish.

(ii) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(iii) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(2) **Buildings in historic districts.**

(i) Rowhouses, town houses, mansions, detached and semi-detached houses and carriage houses:

(A) If historic windows have deteriorated to a point precluding reasonable repair, rehabilitation or restoration, based on a condition report submitted by the applicant, or a field inspection by the staff, or other evidence, including the percentage of the window that is deteriorated, the practicability of repair, trade practice and other factors, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(ii) Small apartment buildings, tenements and hotels:

(A) In small apartment buildings and other types of multiple dwellings, originally built as such, which are six stories or less in height, and with a street frontage of forty (40) feet or less, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(iii) Large apartment buildings and hotels:

(A) In large apartment buildings and other types of multiple dwellings, which either have a street frontage of forty-one (41) feet or greater, or which are seven or more stories in height, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details, and

(d) finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total

glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) Where the historic windows possess special architectural value, including "special" windows (as defined in the definitions (3-01) and illustrated in Appendix A), replacement windows shall match the material of the historic windows.

(iv) Small commercial and loft buildings including cast-iron fronted buildings, department stores, banks and office buildings.

(A) In commercial and loft buildings that are six stories or less in height, and with a street frontage of 40 feet or less, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details,

(d) material, and

(e) finish,

except that straight-headed, double-hung, one-over-one sash may be replaced by sash with a different material, provided the historic brickmolds are preserved, restored or, if necessary, replicated in the historic material, the new sash is installed in same plane as the historic sash, and the sash and brickmolds have a matching finish that replicates the historic finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) With respect to matching of materials, the following shall be understood: a wood historic window shall be replaced in wood, but not necessarily of the same species. A metal historic window shall be replaced with metal but not necessarily of the same metal.

(v) Large commercial and loft buildings, including cast-iron fronted buildings, department stores, banks and office buildings.

(A) In commercial and loft buildings that are seven or more stories in height, or with a street frontage of 41 feet or greater, replacement windows may be approved if they match the historic windows in terms of:

(a) configuration,

(b) operation,

(c) details, and

(d) finish.

(B) Variations in details will be permitted if such variations do not significantly affect the visual characteristics of the window, including the shadow effect of muntins and sash on the glazing. In evaluating "significant" effect, factors to be considered shall be the age of the building and its architectural quality, as well as the extent of diminution in the total glazed area of sash. For wood windows less than 15 inches wide, the diminution shall be limited to 10%; for wood windows 15 inches or wider, the diminution shall be limited to 6%; for metal windows (of any size) the diminution shall be limited to 10%.

(C) Where the historic windows possess special architectural value, including "special" windows (as defined in the definitions (§3-01) and illustrated in Appendix A), replacement windows shall match the material of the historic windows.

(3) **Other buildings:**

For buildings that do not fall into any of the previously described categories, the finding of appropriateness of window replacements will be made on a case-by-case basis. Variations in design of these specialized buildings preclude the applicability of guidelines.

Such special building types include churches and synagogues, hospitals, schools, libraries and the one- or two-story commercial building known as a "taxpayer." Also included in this category are buildings which, unless specifically noted in the text of these guidelines, have been converted from their original use.

(d) **New sash and frames in secondary facades.** (1) If existing windows are visible from a public thoroughfare, replacement windows may be approved if they match the historic windows in terms of:

(i) configuration and

(ii) finish.

(2) If existing windows are not visible from a public thoroughfare, replacement windows may be approved if:

(i) they are to be installed in existing window openings or existing openings that are to be enlarged in height or width, and such enlargement does not alter or destroy protected features, or

(ii) they are to be installed in existing window openings that are to be reduced in height or width; and

(iii) they do not replace "special" windows as defined in the definitions (§3-01) and illustrated in Appendix A.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 2, 2002 §1, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (1) subpar (i) amended City Record July 2, 2002 §2, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (1) subpar (ii) amended City Record Jan. 5, 2000 §7, eff. Feb. 4, 2000. [See T63 §2-15

Note 1]

Subd. (c) par (1) subpar (iii) amended City Record July 2, 2002 §3, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) open par amended City Record July 2, 2002 §4, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (i) open par amended City Record July 2, 2002 §5, eff. Aug. 1, 2002. [See

Note 1]

Subd. (c) par (2) subpar (i) clause (A) amended City Record July 2, 2002 §6, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (i) clause (B) amended City Record Jan. 5, 2000 §8, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (i) clause (C) amended City Record July 2, 2002 §7, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (A) amended City Record July 2, 2002 §8, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (B) amended City Record Jan. 5, 2000 §9, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (ii) clause (C) amended City Record July 2, 2002 §9, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (ii) clause (D) repealed City Record July 2, 2002 §10, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iii) amended City Record Jan. 5, 2000 §10, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (iii) clause (C) amended City Record July 2, 2002 §11, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iv) repealed and added City Record July 2, 2002 §12, eff. Aug. 1, 2002. [See Note 1]

Subd. (c) par (2) subpar (iv) amended City Record Jan. 5, 2000 §3, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

Subd. (c) par (2) subpar (v) added City Record July 2, 2002 §13, eff. Aug. 1, 2002. [See Note 1]

Subd. (d) par (2) amended City Record Jan. 5, 2000 §2, eff. Feb. 4, 2000. [See T63 §2-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 2, 2002:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection,

preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

Section 3-04 of Title 63 of the Rules of the City of New York sets forth the rules for the staff of the LPC to approve replacement windows and sash in designated buildings. The purpose of the proposed amendment to section 3-04 is to assist the public in applying to the Landmarks Preservation Commission for approval of replacement windows.

Rules of the City of New York

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

63 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-05 Master Plans.

(a) A master plan for the repair and/or replacement of windows over a period of time can be approved under a PMW if the plan is in conformance with these guidelines. After the permit is issued, proposed window replacement will require applications requesting an Authorization to Proceed (ATP).

(b) The master plan shall set forth standards for future changes and shall specifically identify such standards by drawings, including large scale details of existing and proposed conditions, plus fenestration and location of proposed changes.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-06 Application Procedure.

(a) **Application.** (1) **Application form.** An application consists of a completed application form and supporting documentation. The form, "For Work on Designated Properties," must be signed by the owner of the property although the applicant may be the lessee or owner's agent. An application from a cooperative or condominium building must be signed by a properly authorized official of the corporation. The form also requires the name of the occupant, lessee or shareholder who is proposing the alteration as well as the name of the person filing the application (if not the owner).

The application form, "For Work on Designated Properties," is available at the Commission's office at 225 Broadway, New York, N.Y., 10007 by mail or by calling (212) 553-1100.

(2) **Supporting documentation.** An application must include photographs, drawings and descriptive material of the existing conditions of the windows and the building. For buildings located in historic districts, photographs of adjacent buildings should also be submitted. In addition, a description of the proposed work, manufacturers' catalogue cuts or drawings with comparative dimensions, details of construction, configuration, color and finish are required. Proposals for metal replacement windows should include material samples.

(b) **Procedure.** (1) All applications received by the Landmarks Preservation Commission will be docketed and reviewed for completeness. The applicant will be notified if additional documentation is required.

(2) When the application is complete, a staff member will review the application for conformance with these guidelines. Upon determination that the criteria of the guidelines have been met, a PMW will be issued.

(3) If the criteria have not been met, the applicant will be given a notice of the proposed denial of the application and an opportunity to request a meeting with the Director of the Preservation Department, or in the absence of the Director with a Deputy Director, to discuss the interpretation of these guidelines. The applicant may also request a meeting and review by the Chairman.

(4) If the application is denied, the applicant shall be informed of his or her right to file for a Certificate of Appropriateness pursuant to law. The decision of whether to approve an application for a Certificate of Appropriateness is made by an affirmative vote of at least six commissioners following a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 3 REPAIR AND REPLACEMENT OF WINDOWS IN LANDMARK AND HISTORIC DISTRICT BUILDINGS (WINDOW GUIDELINES)

§3-07 Pre-Qualified Open Market Manufactured Windows.

The Landmarks Preservation Commission may from time to time, by additional rule, identify as meeting the requirements of these guidelines various manufactured windows which are available on the open market.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

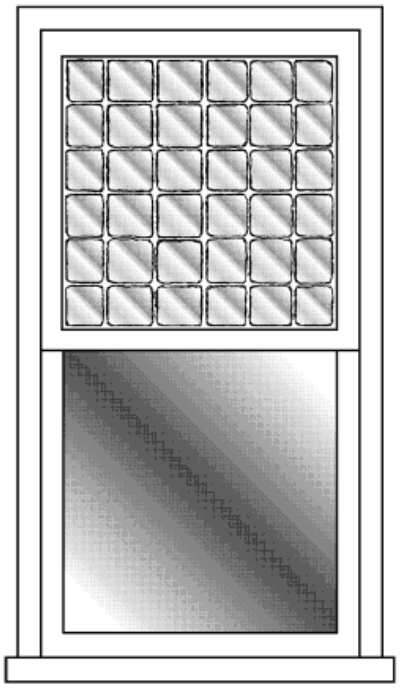
63 RCNY 3 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A ILLUSTRATIONS OF WINDOWS

APPENDIX A ILLUSTRATIONS OF WINDOWS



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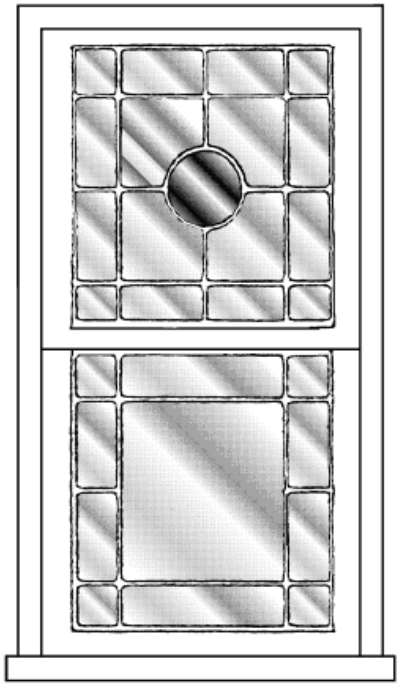

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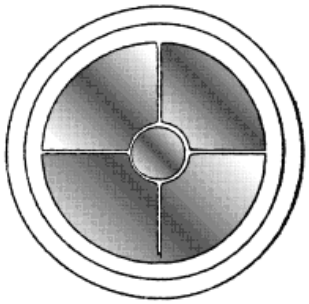

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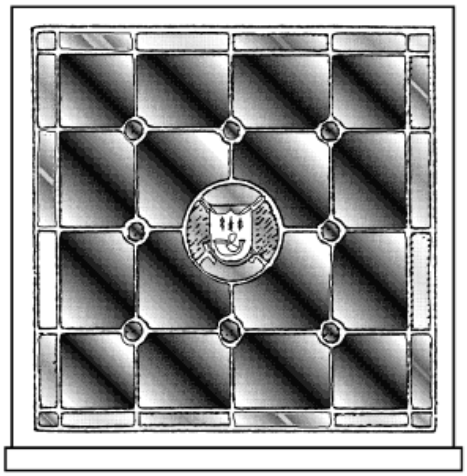

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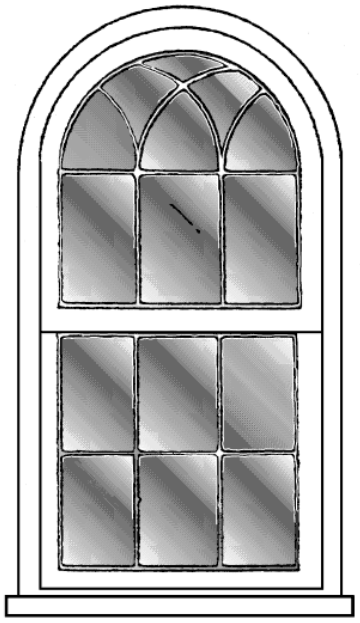
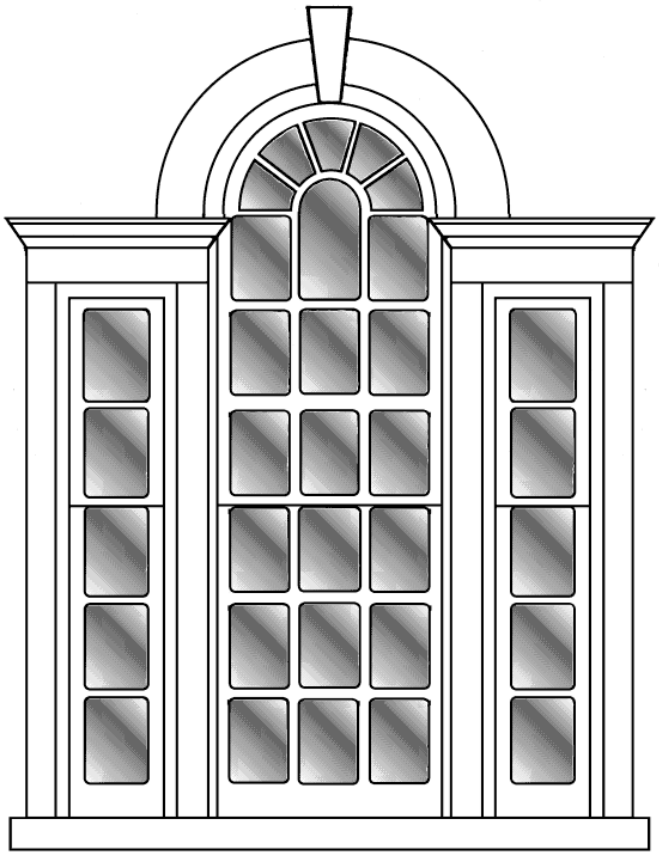


Curved Muntins



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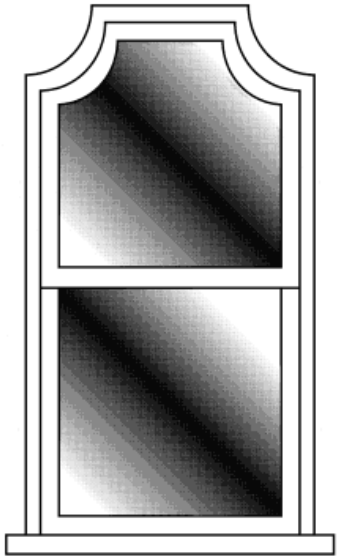
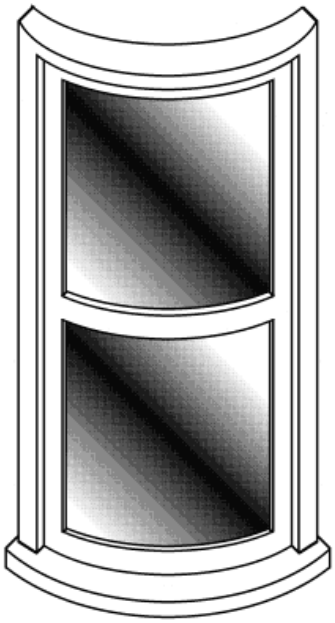


Shouldered



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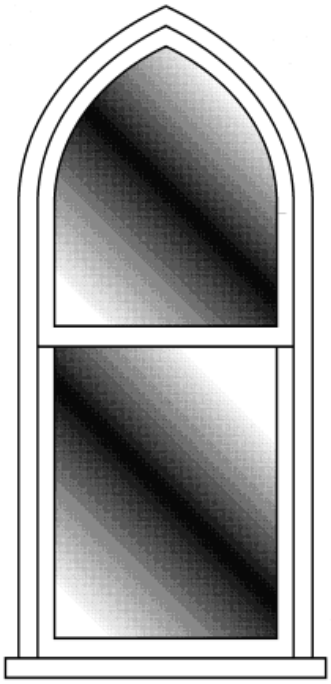

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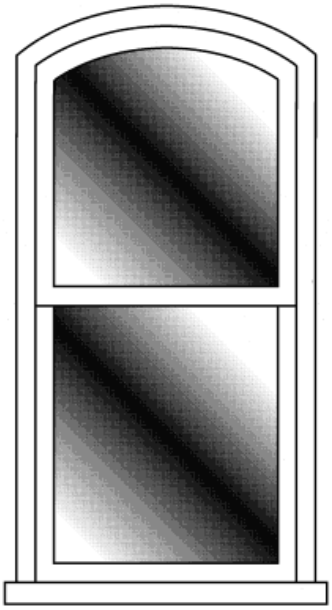

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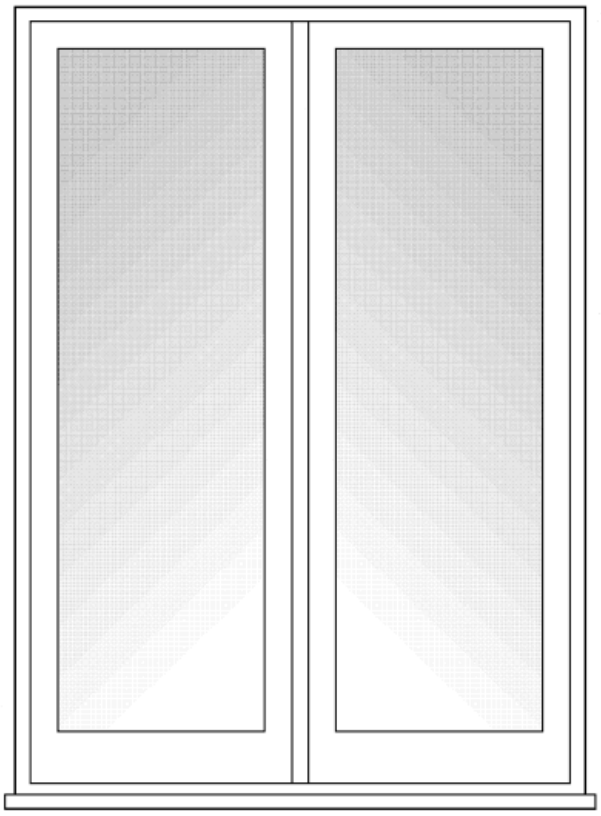

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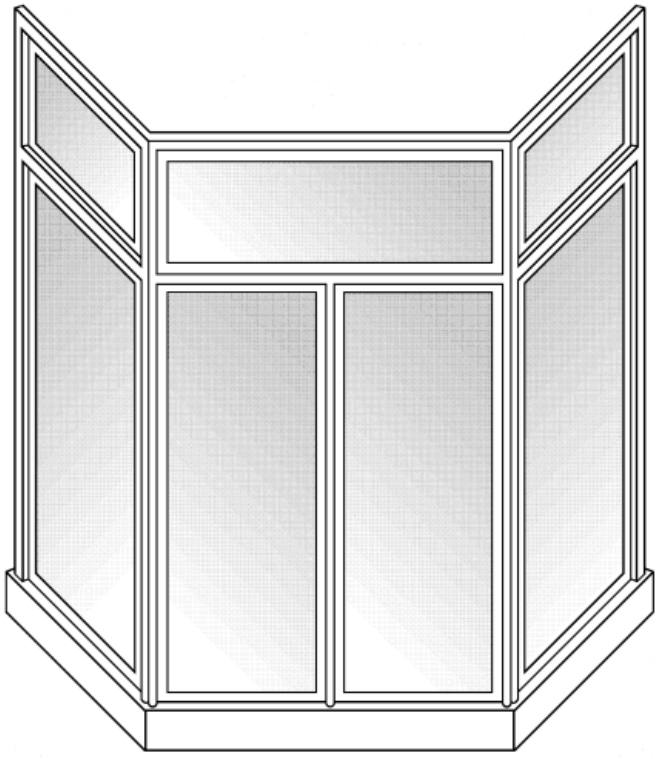
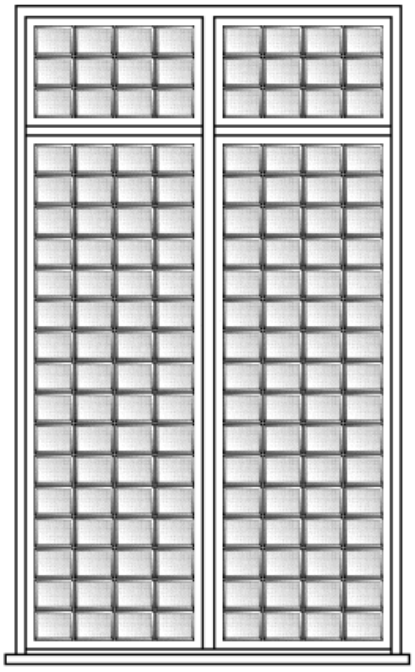
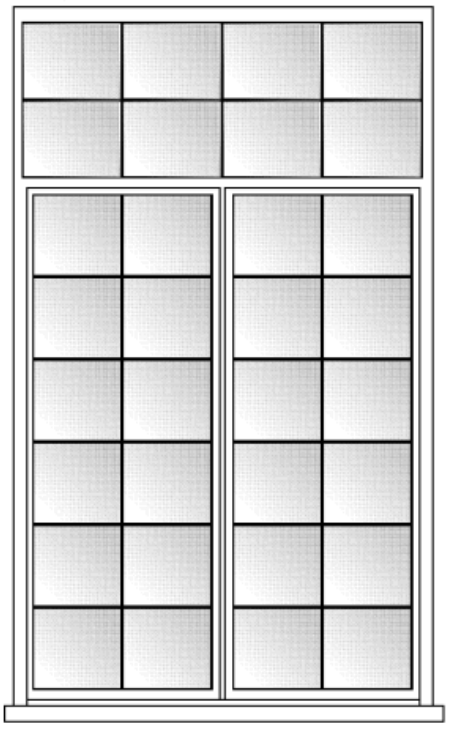


Casement Bays



Leaded



Multi-light

Rules of the City of New York

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

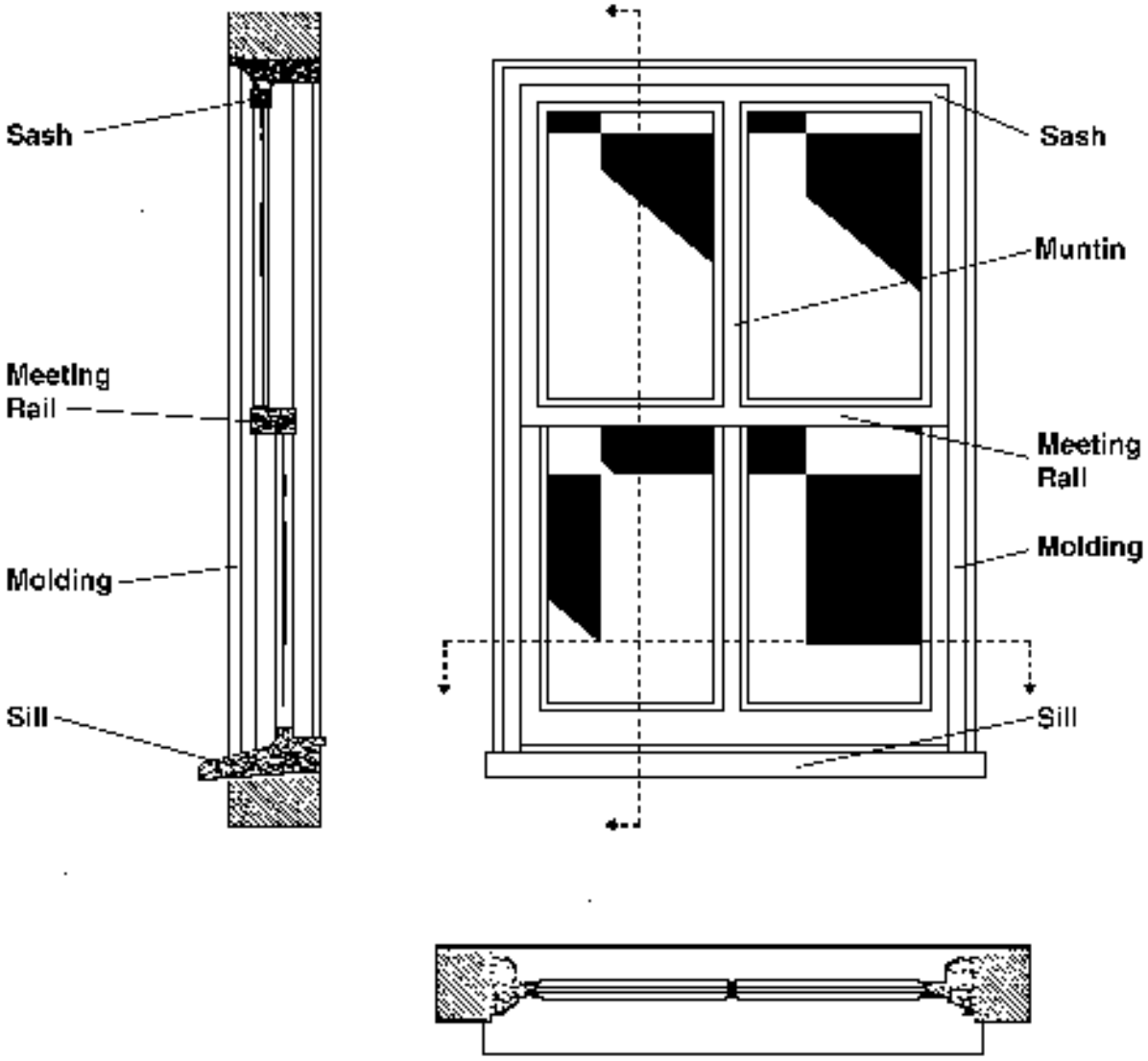
63 RCNY 3 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX B PARTS OF A DOUBLE-HUNG WINDOW

APPENDIX B PARTS OF A DOUBLE-HUNG WINDOW


Sash
Meeting
Rail
Molding
Sill
Sash
Muntin
Meeting
Rail
Molding
Sill

Rules of the City of New York

63 RCNY 3 - APPENDIX C

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX C WINDOW GUIDELINES-DEFINITIONS

APPENDIX C WINDOW GUIDELINES-DEFINITIONS

Color. "Color" shall mean the sensible perception of hue, value and saturation characteristics of surfaces of window components. In the event of disagreement, the Munsell system of color identification shall govern.

Commission. "Commission" shall mean the Landmarks Preservation Commission as established by §3020 of the New York City Charter.

Commissioners. "Commissioners" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the Charter.

Configuration. "Configuration" shall mean the number, shape, organization and relationship of panes (lights) of glass, sash, frame, muntins, or tracery.

Details. "Details" shall mean the dimensions and contours of both the stationary and moveable portions of a window, and moldings. Details are shown in graphic form in Appendix B.

Existing windows. "Existing windows" shall mean the windows existing at the time of designation or windows which have been changed subsequent to designation pursuant to a permit issued by the Commission.

Fenestration. "Fenestration" shall mean the arrangement, proportioning and design of windows in a building.

Finish. "Finish" shall mean the visual characteristics, including color, texture and reflectivity of all exterior materials.

Frame. "Frame" shall mean the stationary portion of a window unit that is affixed to the facade and holds the sash or other operable portions of the windows.

Glazing. "Glazing" shall mean the material, usually glass, that fills spaces between sash members (rails, stiles and muntins), commonly referred to as panes or lights.

Head. "Head" shall mean the upper horizontal part of a window frame or window frame or window opening.

Historic windows. "Historic windows" shall mean:

(1) windows installed at time of construction of the building; or

(2) windows of a type installed at time of construction of similar buildings in similar periods and styles; or

(3) windows installed at time of major facade alterations 30 or more years ago.

Jamb. "Jamb" shall mean the side parts of a window frame or window opening, as distinct from head and sill.

Landmarks law. "Landmarks law" shall be understood to refer to Title 25, Chapter 3 of the Administrative Code of the City of New York.

Light. "Light" shall mean a pane of glass; a window, or a compartment of a window.

LPC. "LPC" shall mean the Commission acting in its agency capacity to implement the landmarks law.

Match. "Match" shall mean either an exact or an approximate replication. If not an exact replication, the approximate replication shall be so designed as to achieve a suitable, harmonious and balanced result.

Materials. "Materials" shall mean the substances used to fabricate windows.

Meeting rail. "Meeting rail" shall mean a sash rail in a double-hung window designed to interlock with an adjacent sash rail.

Member. "Member" shall mean a component part of a window.

Molding. "Molding" shall mean a piece of trim that introduces varieties of outline or curved contours in edges or surfaces as on window jambs and heads. Moldings are generally divided into 3 categories: rectilinear, curved and composite-curved.

Mullion. "Mullion" shall mean a vertical primary framing member that separates paired or multiple windows within a single opening.

Muntin. "Muntin" shall mean the tertiary framing member that subdivides the sash into individual panes, lights or panels; lead "cames" are often used in stained glass windows.

Note: Grids placed between two sheets of glass are not considered muntins.

Operation. "Operation" shall mean the manner in which a window unit opens, closes, locks, or functions; e.g., casement, double-hung, e.g., If non-operable, a window unit (such as a side light) is identified as "fixed."

Panning. "Panning" shall mean an applied material, usually metal, that covers the front (exterior) surface of an existing window frame or mullion.

Parting strip. "Parting strip" shall mean the small member, usually wood and usually removable, that separates the

upper and lower sash pockets in the jamb of a double-hung window.

Permit. "Permit" shall mean any permit issued by the Landmarks Commission, in accordance with the provisions of the landmarks law:

(1) "PMW" to mean Permit for Minor Work as defined by §25-310 of the landmarks law.

(2) "CNE" to mean Certificate of No Effect as defined by §25-306 of the landmarks law.

(3) "C of A" to mean Certificate of Appropriateness as defined by §25-307 of the landmarks law.

Principal facade. "Principal facade" shall mean

(1) a facade facing a street or a public thoroughfare that is not necessarily a municipally dedicated space, such as a mews or court; or

(2) a facade that does not face a street or mews or court but that possesses significant architectural features.

Rail. "Rail" shall mean a horizontal sash member.

Rehabilitation. "Rehabilitation" shall mean any repair work that requires a permit. (See §3-02 below.)

Repair. "Repair" shall mean any work done on any window to correct any deterioration or decay of or damage to a window or any part thereof and to restore same, as closely as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage. The term "ordinary repair" shall refer to work that does not require a permit. (See §3-02 below.)

Restoration. "Restoration" shall mean the process of returning, as nearly as possible, a building or any of its parts to its original form and condition.

Sash. "Sash" shall mean the secondary part of a window which holds the glazing in place; may be operable or fixed; usually constructed of horizontal and vertical members; sash may be subdivided with muntins.

Secondary facade. "Secondary facade" shall mean a facade that does not face a public thoroughfare or mews or court and that does not possess significant architectural features.

Significant architectural feature. "Significant architectural feature" shall mean an architectural component of a building that contributes to its special historic, cultural and aesthetic character, or that in the case of an historic district reinforces the special characteristics for which the district was designated.

Sill. "Sill" shall mean the lower horizontal part of a window frame or window opening; also the accessory member which extends as a weather barrier from frame to outside face of wall.

Special windows. "Special windows" shall mean:

(1) those windows in which the complexity of the muntin pattern or the molding profiles is one of the characteristics of the style and age of the building; or

(2) windows having one or more of the following or similar attributes, including but not limited to:

(i) Bay or oriel window

(ii) Curved glass

(iii) Multi-pane sash, i.e., 12 or more panes in a single sash in which a typical pane does not exceed 30 square inches of open (glazed) area

(iv) Stained or otherwise crafted glazing for artistic effect

(v) Highly decorated (carved or otherwise embellished) sash or frame

(vi) Non-rectilinear sash or frame.

See Appendix A for illustrations of these and other types of "Special Windows."

Stile. "Stile" shall mean a vertical sash member.

Story. "Story" shall be defined as a habitable floor level, including a basement but not including a cellar.

Rules of the City of New York

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

63 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 4 DESIGNATED BROADWAY THEATERS

§4-01 Treatment of Designated Broadway Theater Interiors (Theater Interior Guidelines).

(a) **Preface.** Work may be done on designated interior portions of theaters either without application to the Commission, or with a Certificate of No Effect on Protected Architectural Features (CNE) if the proposed work is in accordance with the following guidelines:

(1) For production-related work, no application to Landmarks Preservation Commission is needed if the guidelines set forth in §4-01(b)(1) below are followed, but owner must submit a written description to the Landmarks Preservation Commission (LPC), prior to undertaking the work, clearly delineating the scope of the proposed work. This description should also include steps to be taken after the end of the production to return the interior to its prior condition if significant architectural features are proposed to be altered, unless further changes are mandated by an incoming production, in which case the interior would be returned to its prior condition following the latter production.

(2) For permanent alterations, application to LPC is necessary and a CNE will be issued by staff if in accordance with the guidelines set forth in §4-01(b)(2) below.

(3) Applications for work not in accordance with the guidelines will be subject to the usual landmark review procedure as set forth in Chapter 3 of Title 25 of the Administrative Code.

Note: The guidelines are keyed to underlined portions of the Description Section of the Designation Reports, which identify architecturally significant features requiring protection.

(b) **Guidelines.** (1) **Production-related changes.** No permit needed for work, if the following conditions are met:

(i) Interior configuration of the theater is maintained.

(ii) Any alteration to architectural features underlined in the Description Section of the Designation Report is reversible. (It should be noted that alterations to certain architectural features may not be reversible; for example, murals or heavily three-dimensional decorative features such as putti.)

(iii) Following a production in which a theater interior is to be painted in a non-contrasting color scheme, the theater interior will be painted in contrasting colors, unless some other color scheme is mandated by the incoming production, in which case the interior would be painted in contrasting colors following the latter production. (A contrasting color scheme is one in which the ornamental architectural details are painted a different color or a different value or hue of the same color than the background.)

(iv) If the Buildings Department requires a permit for the work, a CNE will be issued by staff within five working days of the receipt of a completed application.

(2) **Permanent changes.** A CNE will be issued by the staff within five working days of receipt of a completed application for alterations to the theater if the following conditions are met:

(i) Interior configuration is maintained.

(ii) Staff has determined that the alteration would not affect significant architectural features underlined in the Description Section of the Designation Report. In theaters which are only designated on the interior, such alterations could include exterior build-overs.

(iii) Any installation of state-of-the-art changes, as certified by the owner, such as light bridges, sound booths, and balcony rail light housings, provided that staff finds that

(A) their installation will have no effect on the physical fabric of the significant architectural features of the interior, or

(B) that such effect is reversible and that adequate steps will be taken to assure that affected features can be replaced in the future.

HISTORICAL NOTE

Section in original publication July 1, 1991.

63 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 4 DESIGNATED BROADWAY THEATERS

§4-02 Treatment of Designated Broadway Theater Exteriors (Theater Exterior Guidelines).

(a) **Preface.** Work may be done on designated exterior portions of theaters either without application to the Commission, or with a Certificate of No Effect on Protected Architectural Features (CNE) if the proposed work is in accordance with the following guidelines:

(1) For production-related work, no application to LPC is needed if the guidelines set forth in §4-02(b)(1) below are followed, but the owner must submit a written description to the LPC, prior to undertaking the work, clearly delineating the scope of the proposed work. This description should also include steps to be taken after the end of the production to return the exterior to its prior condition if significant architectural features are proposed to be altered.

(2) For permanent alterations, application to LPC is necessary and a CNE will be issued by staff if in accordance with the guidelines set forth in §4-02(b)(2) below.

(3) Applications for work not in accordance with the guidelines will be subject to the usual landmark review procedure as set forth in Chapter 3 of Title 25 of the Administrative Code.

Note: The guidelines are keyed to underlined portions of the Description Section of the Designation Reports, which identify architecturally significant features requiring protection.

(b) **Guidelines.** (1) **Production-related changes.** No permit is needed for the following work, if the stated conditions are met:

(i) The installation of new signage or alteration of existing signage, lighting, or other advertisement, provided that anchorages do not physically affect architectural features underlined in the designation report description. (Changing of light box fillers, posters, photos, etc. would not require review or notice to the Commission.)

(ii) Painting of exterior surfaces, if they were previously painted.

(iii) Alterations or additions to any undeveloped portions of the theatre exterior, provided that the protected features of a designated interior are not affected.

(iv) Any alterations to underlined exterior architectural features in the report that are reversible. (A reversible alteration is one in which the altered feature can be returned to its appearance prior to the alteration.)

(v) Removal of any feature which has not been identified in the Description Section of the Designation Report of the theater.

(vi) For theaters in which the exterior is designated only for cultural and historical significance, any alteration to the facade may be made provided that:

(A) Lighted signage and advertisements for productions are utilized.

(B) Continuous entrance doors are maintained between the lobby and the street and the auditorium and the street, where they presently exist.

(C) A marquee is utilized to shelter the sidewalk adjacent to the entrance doors referred to in §4-02(b)(1)(vi)(B).

(2) **Permanent changes.** A CNE will be issued by the staff within five working days of receipt of completed application for the following work, if the stated conditions are met.

(i) The installation of new signage or alteration of existing signage, lighting, awnings, marquees or other advertisements, provided that anchorages do not physically affect architectural features underlined in the Description Section of the Designation Report and that the signage, lighting, or awning of marquee is not architecturally significant in itself.

(ii) Any alteration or additions to any portion of the theater exterior not visible from the public way, provided that the protected features of the exterior of any designated interior are not affected.

(iii) Removal of any feature which has not been identified and underlined in the Description Section of the Designation Report of the theater.

(iv) For theaters in which exterior is designated only for cultural or historical significance, any alterations to the exterior of the theater may be made provided that:

(A) Lighted signage and advertisements for productions are utilized.

(B) Continuous entrance doors are maintained between the lobby and the street and the auditorium exit and the street, where they presently exist.

(C) A marquee is utilized to shelter the sidewalk adjacent to the entrance doors referred to in §4-02(b)(2)(iv)(B).

(D) The existing proportions of the facade (width to height) are not altered.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

63 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-01 Introduction.

The Historic Preservation Grant Program provides grants to eligible nonprofit organizations and homeowners for the preservation of designated landmark properties through restoration, repair and rehabilitation work. All grants must meet the guidelines laid out for historic preservation activities under the federal Community Block Grant program regulations. 24 CFR Sec. 570.202(d).

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations

governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

40 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-02 General Eligibility Requirements.

In addition to any applicable federal regulations regarding the Community Block Grant Program, grant applicants shall also meet the following criteria:

(a) **Eligible structures.** Structures which are designated or calendared individual landmarks, are located in designated historic districts, or contain interior landmarks. Eligible structures may also include those improvements located in New York City that are listed or eligible for listing on the National Register. The premises cannot be in arrears for unpaid real estate taxes, water/sewage charges, or have any unrescinded notice of violations issued by the Landmarks Preservation Commission or the Department of Buildings.

(b) **Eligible repairs.** Grants shall be made for the following work:

(1) to repair and restore exterior features of an eligible structure;

(2) to address structural damage or severe deterioration that threatens to undermine the integrity of an eligible structure;

(3) to repair and restore eligible interiors.

(c) **Ownership/occupancy.** (1) **Homeowners.** Owners of eligible residential properties may receive grant funds if the owner and/or occupants meet §8 income limits as they appear in the federal Community Block Grant Program regulations. 24 CFR §570.208(a)(2)(i)(B) and (C).

(2) **Nonprofit organizations.**

(i) Nonprofit organizations applying for grant funds must either own or hold a long term lease on the property for which funds are sought.

(ii) To be eligible for consideration as a nonprofit organization, the applicant must be a charitable, cultural, educational, scientific, literary, or other entity organized under §501(c)(3) of the Internal Revenue Code.

(d) **Grant beneficiaries.** All grant-funded work must (1) principally benefit low and moderate income persons or (2) address slum and blight conditions as set forth in and defined under the federal Community Block Grant Program regulations. 24 CFR §570.208.

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

Rules of the City of New York

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

63 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 5*1 HISTORIC PRESERVATION GRANT PROGRAM

§5-03 Application Requirements and Selection Criteria.

(a) Grant applications will be evaluated and funds will be awarded by a board composed of the director of the Historic Preservation Grant Program and other staff members of the Landmarks Preservation Commission as the Chairman shall in his or her discretion appoint.

(b) In awarding grants, the Historic Preservation Grant Program board will give preference to properties designated or calendared by the Landmarks Preservation Commission and will consider the following factors, among others:

(1) the architectural and historical importance of the building; and

(2) the condition of the building and the degree to which the proposed work will materially address the building's condition; and

(3) the applicant's financial resources; and

(4) the effect the grant will have on improving the building and/or the district.

(c) Application forms and fact sheets for the Historic Preservation Grant Program may be obtained by contacting the Commission's Director of the Historic Preservation Grant Program.

HISTORICAL NOTE

Section amended City Record Aug. 21, 2001 eff. Sept. 20, 2001.

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 21, 2001 eff. Sept. 20, 2001; Chapter repealed and added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of the Final Rules in City Record July 14, 1997: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission administers a Historic Preservation Grant Program to assist certain owners and nonprofit organizations in the repair and restoration of landmark buildings. The Historic Grant program is funded by federal Community Development Grant Program funds established under Title 1 of the Housing and Community Development Act of 1974 as amended.

The purpose of the rules is to assist the public in applying to the Landmarks Preservation Commission for grants under the Historic Preservation Grant Program and to establish the eligibility criteria and application process for the historic grant program.

Rules of the City of New York

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

63 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-01 Introduction.

The purpose of these rules is to establish the Landmarks Preservation Commission's regulatory policy in the Riverdale Historic District.

The Riverdale Historic District which was developed as an early railroad suburb is characterized as a distinct area of the city by its dramatic and verdant topography and its fine examples of nineteenth and early twentieth century dwellings and carriage houses. The houses and other buildings in the district are harmoniously sited within the landscape and are separated from each other by landscape Improvements.

Landscaping in the Riverdale Historic District provides the picturesque setting which is a defining element of a romantic style suburb of the nineteenth century. Landscape Improvements such as trees, stone walls and hedges, used to define property lines, and additional plantings within the expansive gardens and alongside the houses, add to the special character of the Historic District.

The district contains 34 buildings of varied type and age. The development of the Riverdale Historic District is important in understanding the district's historic character. Originally, the area was comprised of only seven estates which were served by a common carriage alley (Sycamore Avenue). All of the estates were developed in the 1850s. Several early estate houses remain, as well as stables and carriage houses (later converted for residential use). The configuration of these estates remained intact until 1935, when the original parcels began to be subdivided for development. Four new houses were built between 1935 and 1938. No new buildings were built thereafter until 1950. From 1950 to 1980 twelve new structures were constructed. These newer structures are stylistically diverse but are

generally compatible with the older buildings in terms of their placement, height, materials and finish.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-02 Definitions.

As used in these Rules the following terms shall have the following meanings:

Addition. "Addition" shall mean an extension or increase in the floor area or height of a building that increases its external dimensions.

Commission. "Commission" shall mean the New York City landmarks Preservation Commission as established by §3020 of the New York City Charter.

Demolition. "Demolition" shall mean the dismantling or razing of all or part of an existing Improvement or significant Landscape Improvement.

Improvement. "Improvement" shall mean any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment other than a Landscape Improvement.

Landscape improvement. "Landscape improvement" shall mean a physical betterment of real property or any part thereof, consisting of natural or artificial landscaping, including but not limited to grade, terrace, body of water, stream, rock, hedge, plant, shrub, mature tree, path, walkway, road, plaza, wall, fence, step, fountain, or sculpture.

Landmarks law. "Landmarks law" shall refer to New York City Charter §3020 and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks preservation commission. "Landmarks preservation commission" shall mean the Commission acting in its agency capacity to implement the Landmarks law.

Mature tree. "Mature tree" shall mean any tree with a trunk diameter of 12" or greater.

Modification. "Modification" shall mean any work to an existing improvement or landscape improvement other than (a) ordinary maintenance or repair; or (b) any Addition.

Permit. "Permit" shall mean any permit other than a notice to proceed issued by the Landmarks Preservation Commission in accordance with the provisions of the Landmarks Law:

(a) "PMW" shall mean permit for minor work as defined by §25-310 of the Landmarks Law.

(b) "CNE" shall mean certificate of no effect as defined by §25-306 of the Landmarks Law.

(c) "CofA" shall mean certificate of appropriateness as defined by §25-307 of the Landmarks Law.

Pre-l940 building. "Pre-1940 building" shall mean any building in the Riverdale Historic District built, in whole or in part, prior to January 1, 1940 including buildings which have undergone subsequent remodeling and alterations.

Post-1939 building. "Post-1939 building" shall mean any building in the Riverdale Historic District built on or after January 1, 1940.

Public Thoroughfare. "Public Thoroughfare" shall mean any publicly accessible right of way including, but not limited to a street, sidewalk, public park, and path.

Significant architectural feature. "Significant architectural feature" shall mean any character-defining external component of a building including, but not limited to, the kind, color and texture of the building material and the type and style of any window, door, light, sign and other fixture appurtenant to any Improvement.

Significant landscape improvement. "Significant landscape improvement" shall mean any landscape improvement which is a character-defining element in its historic district, contributing to the special aesthetic and historic character for which the district was designated, and including but not limited to those Landscape Improvements identified as landscape features in the Designation Report.

Special natural area district. "Special natural area district" shall refer to a special purpose district designated by the New York City Planning Commission pursuant to Article X, Chapter 5 of the New York City Zoning Resolution which is mapped in areas where outstanding natural features or areas of natural beauty are to be protected.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-03 Statement of Regulatory Policy.

(a) In regulating modifications and additions to any existing improvement and construction of any new structures or any work affecting landscape improvements in the Riverdale Historic District, the Landmarks Preservation Commission seeks to preserve the Riverdale Historic District's important landscape qualities and special architectural and historic character.

(b) In the Riverdale Historic District, the Landmarks Preservation Commission finds that the houses and other structures which make an important and significant architectural contribution to the Riverdale Historic District are those built, in whole or in part, before 1940.

(c) In assessing whether proposed work is compatible with the special characteristics of the Riverdale Historic District in terms of the placement, style, size, material and finish of such work, the Landmarks Preservation Commission shall consider such work's proximity to any significant landscape improvement or pre-1940 building and how it may physically or visually impact the building or landscape improvement. The Landmarks Preservation Commission shall also consider the extent of the proposal's visibility from a public thoroughfare.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-04 Modifications of and Additions to Existing Buildings.

(a) **Applications for proposed work.** An application shall be filed for any proposed modification or addition to any existing improvement or the construction of any new structure within the Riverdale Historic District for review by the Landmarks Preservation Commission and no work shall commence until the Landmarks Preservation Commission has issued a permit approving such work.

(b) **Pre-1940 buildings.** (1) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following:

(i) Any addition to an existing structure which does not result in damage to or cause the demolition of a significant landscape improvement and which is to be situated in such a way as not to be visible from a public thoroughfare.

(ii) Any modification to an existing structure which:

(A) does not result in damage to or cause the demolition of a significant architectural feature or significant landscape improvement; and

(B) which is compatible with the existing structure's special architectural characteristics in terms of the placement, style, size, materials and finish of such modification.

(2) The Landmarks Preservation Commission shall consider an application for any of the following types of work

as a request for a certificate of appropriateness and shall hold a public hearing on such application:

(i) Any addition which is visible from a public thoroughfare.

(ii) Any modification or addition which does not meet the criteria for issuance of a PMW or CNE set forth in Subsection 6-04(b)(1) above, including any modification or addition which would result in damage to or cause the demolition of a significant architectural feature or significant landscape improvement.

(c) **Post-1939 buildings.**

(1) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following:

(i) Any addition to an existing structure which does not result in damage to or cause the demolition of a significant landscape improvement and which is to be situated in such a way as to not be visible from a public thoroughfare.

(ii) Any addition to an existing structure which:

(A) although visible from a public thoroughfare does not result in damage to or demolition of a significant landscape improvement; and

(B) is compatible with the special characteristics of the Riverdale Historic District in terms of placement, height, roof line, materials and finish of such addition.

(iii) Any modification to an existing structure which:

(A) does not result in damage to or cause the demolition of a significant landscape improvement; and

(B) is compatible with the special characteristics of the Riverdale Historic District in terms of its materials and finish.

(2) The Landmarks Preservation Commission shall consider an application for any of the following types of work as a request for a certificate of appropriateness and shall hold a public hearing on such application:

(i) Any addition or modification which results in damage to or causes the demolition of a significant landscape improvement.

(ii) Any addition or modification which does not meet the criteria for the issuance of a PMW or CNE set forth above in subsection 6-04(c)(1).

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-05 Regulation of Landscape Improvements.

(a) **Actions not Subject to Regulation.** (1) The landmarks preservation commission shall not regulate ordinary and beneficial landscaping activities which are in accordance with accepted horticultural practice such as pruning, planting of seasonal flower beds or vegetable gardens, or planting of ornamental shrubs or trees.

(2) The landmarks preservation commission shall not regulate the placement of portable garden furniture nor the installation of any temporary enclosure such as a tent for a party or reception.

(b) **Modification of landscape improvements.** (1) the boundaries of the Riverdale Historic District lie entirely with the Riverdale Special Natural Area District. These rules are intended to work with and complement the Riverdale special natural area district zoning.

(2) The Landmarks Preservation Commission shall regulate any modification to the landscape of the Riverdale Historic District which involves the installation of any permanent fixture or the construction of any structure or paved area or which would cause the demolition of, or have an impact on, any significant landscape improvement. Such work shall include:

(i) modification to or construction of any wall, step, path, drive, railing, fence, gate and gate post, permanent garden structure and pavilion, sidewalk and street gutter;

(ii) any change which affects or impacts upon a hedge or Mature Tree as well as any excavation or fill in a slope

exceeding 15 percent; and

(iii) the installation of a new paved area, patio or deck.

(3) The Landmarks Preservation Commission shall issue a CNE or a PMW for the following landscape modifications:

(i) Work which does not result in damage to or demolition of any Significant landscape Improvement.

(ii) Work which in terms of placement, style, size, material and finish is compatible with the special characteristics of the Riverdale Historic District.

(4) The Landmarks Preservation Commission shall consider any application for a proposed landscape modification which does not meet the criteria for a CNE or PMW set forth above in subsection 6-05(b)(3) as a request for a certificate of appropriateness and shall hold a public hearing on such application.

(c) **Applications for proposed work.** An application shall be filed for any proposed work having an effect on any landscape improvement within the Riverdale Historic District for review by the Landmarks Preservation Commission and no work shall commence until the Landmarks Preservation Commission has issued a permit approving such work.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 6 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STRUCTURES AND LANDSCAPES IN THE RIVERDALE HISTORIC DISTRICT

§6-06 Construction of New Structures.

Any application for a new structure shall be considered as a request for a certificate of appropriateness and shall be reviewed at a public hearing. In determining the appropriateness of any new structure the Landmarks Preservation Commission shall take into consideration such new structure's location, its proximity to and impact on any Pre-1940 building or any significant landscape improvement, its placement into the landscape and its compatibility with the visual and architectural character of the Riverdale Historic District. Additional considerations shall include the new structure's proximity to a public thoroughfare and the extent of its visibility from a public thoroughfare.

HISTORICAL NOTE

Section added City Record Nov. 27, 1991 eff. Dec. 27, 1991.

Rules of the City of New York

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

63 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-01 Definitions.

As used in these Rules the following terms shall have the following meanings: Commission. "Commission" shall mean the New York City Landmarks Preservation Commission as established by §3020 of the New York City Charter.

Day. "Day" shall mean any day other than a Saturday or Sunday or legal holiday.

Landmarks law. "Landmarks law" shall be understood to refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landmarks preservation commission. "Landmarks preservation commission" shall mean the commission acting in its agency capacity to implement the landmarks law.

Permit. "Permit" shall mean any permit other than a notice to proceed, issued by the Landmarks Preservation Commission, in accordance with the provisions of the Landmarks law:

(1) "PMW" shall mean permit for minor work as defined by §25-310 of the Landmarks law.

(2) "CNE" shall mean certificate of no effect as defined by §25-306 of the Landmarks law.

(3) "CofA" shall mean certificate of appropriateness as defined by §25-307 of the Landmarks law and shall not refer to a certificate of appropriateness as defined by §25-309.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Rules of the City of New York

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

63 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-02 Duration of Permits.

(a) (1) All permits shall be of limited duration as provided in these rules.

(2) Each permit shall clearly state the expiration date of such permit on the permit.

(b) The following permits shall have the following durations:

(1) Each PMW shall be valid for four (4) years from the date of such PMW.

(2) Each CNE shall be valid for four (4) years from the date of such CNE.

(3) Each CofA shall be valid for six (6) years from the date of a commission vote on such CofA.

(4) Any PMW, CNE or CofA issued for a master plan shall be valid indefinitely.

(c) Without limiting the time periods for permit duration set forth in subsection 7-02(b), where a permit or certificate has been issued to cure a violation, the Commission may require by the terms of such permit or certificate that the work be performed within a specified time period. The failure to perform the work and cure the violation within the specified time period shall mean that the Chair may serve a warning letter, a first, second or subsequent NOV in accordance with the provisions of §§25-317.1b and 25-317.2 of the Administrative Code.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Subd. (c) added City Record July 6, 1998 eff. Aug. 5, 1998. [See T63 Chapter 11 footnote]

Rules of the City of New York

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

63 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-03 Renewal of Permits.

(a) The landmarks preservation commission may issue a renewal of a permit only upon the satisfaction of all of the following conditions:

(1) An application requesting a renewal shall be filed with the landmarks preservation commission no later than sixty (60) days prior to the expiration date shown on such permit.

(2) The application requesting a renewal shall include (i) a copy of a signed contract which is binding on the parties thereto for the work which is the subject of the permit then expiring and which specifies that work thereunder is to be commenced by a date which is at least sixty (60) days prior to the expiration date of such permit and (ii) if a building permit is required for the work which is the subject of the expiring permit, a copy of a valid building permit based on the landmarks commission's permit for the work which is the subject of the permit then expiring.

(3) No "Notice of Violation" from the landmarks preservation commission shall be in effect against the property subject to the permit for which a renewal is requested; provided, however, that if the landmarks preservation commission shall find that (i) the work which is the subject of the permit for which a renewal is requested (A) will correct a hazardous condition or (B) prevent deterioration affecting the building; or (ii) an escrow agreement, or other acceptable form of assurance, has been established to provide a mechanism, acceptable to the landmarks preservation commission, to ensure that work approved to correct the notice of violation will be completed within a specified time period, then this subsection (3) shall not apply.

(b) If all conditions to the renewal of a permit have been met on or before the expiration date of such permit, the

landmarks preservation commission shall issue a renewal permit to the applicant which shall be valid for (i) two (2) years from the date of the expiration of the original permit if the permit renewed in either a PMW or a CNE or (ii) three (3) years from the date of the expiration of the original permit if the permit renewed is a CofA.

(c) (1) Notwithstanding the foregoing provisions, the chair of the landmarks preservation commission shall have the discretion, based on extraordinary circumstances, to allow the renewal of any permit. Such circumstances may include, but shall not be limited to, (i) delays resulting from the inability to obtain other governmental approvals, licenses or permits or (ii) an inability to complete construction of a project for which work has begun and is continuing with due diligence.

(2) Request for any such discretionary extension shall be made in writing no later than sixty (60) days prior to the expiration date of the permit or within ten (10) days after receipt of notice that the permit will not be renewed, and may include supporting documentation. The chair shall respond to such request within twenty (20) days of receipt of the request. If the chair of the landmarks preservation commission determines that a renewal of the permit should be allowed, the landmarks preservation commission shall renew the permit for a stated term of years.

(3) In allowing the renewal, the chair may set reasonable conditions including clearing up any outstanding violations within a reasonable stated time.

(d) The expiration of any permit shall be tolled if judicial proceedings to review the decision to grant the permit, or any other governmental approval, license, permit or similar action applied for, or granted in connection with, the project have been instituted until the date of the entry of a final order in such proceedings, including all appeals.

(e) Any person who has been notified by the commission that a permit will not be renewed because a "notice of violation" from the landmarks commission is in effect against the property may request that the chair of the commission review whether the notice of violation is properly in effect against the property. Such request shall be made in writing within ten (10) days from the date of the notification that the permit will not be renewed and may include supporting documentation. The chair of the landmarks preservation commission shall respond to such request within twenty (20) days of receipt of the request. If the chair determines that a notice of violation was not properly in effect against the property, the landmarks preservation commission shall issue a renewed permit if it finds that all other conditions set forth in these rules have been met.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

51 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-04 Effect of Expiration of Permits.

(a) Upon expiration of any permit, such permit shall terminate and be of no further effect.

(b) An applicant may apply for a new permit for work which is the subject of an expired permit. The landmarks preservation commission shall treat such application for a renewal which does not meet the condition for the renewal of permits as a new application in all respects subject to all applicable procedures, rules and guidelines in effect at the time of such application for renewal.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Rules of the City of New York

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

63 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 7 PERMIT EXPIRATION AND RENEWAL

§7-05 Miscellaneous.

Any permit (i) which is either a PMW or a CNE issued after the effective date hereof or (ii) which is a CofA which the commission approves by a vote taken after the effective date hereof shall be subject to these rules.

HISTORICAL NOTE

Section added City Record Oct. 7, 1992 eff. Nov. 6, 1992.

Rules of the City of New York

63 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-01 Introduction.

These Rules are issued to assist the public in applying to the Landmarks Preservation Commission (the "Commission") for approval for the restoration, rehabilitation, alteration, or replacement of storefronts and associated fixtures in existing buildings within the Jackson Heights Historic District. These Rules enunciate the Commission's policy with respect to such work, and allow the staff of the Commission ("LPC staff") to issue permits for work conforming to these Rules. These Rules will ensure that new storefronts will be consistent with the architectural features that establish the aesthetic, historical, and architectural value and significance of the Jackson Heights Historic District.

The Jackson Heights Historic District represents one of the first areas in the city in which the commercial thoroughfares were designed to complement and integrate with the residential buildings through the use of the same architectural styles and features of adjoining residential buildings. The majority of buildings within the Jackson Heights Historic District were built between 1910 and the 1950s. The styles found in both the residential and commercial buildings of the Jackson Heights Historic District include the neo-Tudor (e.g., English Gables at 37-12 to 37-34 82nd Street), the neo-Romanesque (e.g., Ravenna Court at 80-01 to 80-29 37th Avenue), the neo-Georgian (e.g., Georgian Hall at 83-01 to 83-27 37th Avenue), and the Moderne (e.g., 78-01 to 78-15 37th Avenue).

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

Rules of the City of New York

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

63 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-02 Definitions.

As used in the Jackson Heights Historic District Storefront Rules, the following terms shall have the following meanings:

Awning. "Awning" shall mean a metal frame clad with fabric attached over a storefront, door or window, to provide protection from the sun or rain.

Bulkhead. "Bulkhead" shall mean the part of a storefront that forms a base for one or more display windows (see Appendix A).

Building Streetwall. "Building Streetwall" shall mean the predominant plane of the building facade at the level of the storefront.

Canopy. "Canopy" shall mean a metal frame clad with fabric that projects from a building entrance over the sidewalk to the curb, where it is supported on vertical posts.

The Commission. "The Commission" shall mean the Commissioners of the Landmarks Preservation Commission, including the Chairman, as established by Section 3020 of the New York City Charter.

Cornice. "Cornice" shall mean a horizontal molded projection that completes the top of a wall, facade, building or storefront (see Appendix A).

Display window. "Display window" shall mean the large glazed portion of the storefront, and the associated framing, above the bulkhead and below the transom, extending from pier to pier. The display window is typically used for the display of goods and to provide daylight and visibility into the commercial space (see Appendix A).

Entrance recess. "Entrance recess" shall mean the recessed opening in the facade leading up to the doorway of a storefront or building entrance (see Appendix A).

Facade. "Facade" shall mean an entire exterior face of a building.

Fixture. "Fixture" shall mean an appliance or device attached to the facade (e.g., awning, sign, lighting fixture, conduit, or security gate).

Historic fabric. "Historic fabric" shall mean a building's original or significant historic facade construction material or ornament, or fragments thereof.

Landmarks Law. "Landmarks Law" shall refer to Section 3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Lighting. "Lighting" shall mean the method or equipment for providing artificial illumination.

Lintel. "Lintel" shall mean the horizontal member or element above a door or window opening (see Appendix A).

LPC staff. "LPC staff" shall mean the staff of the Landmarks Preservation Commission acting in the Commission's agency capacity.

Permit. "Permit" shall mean any permit other than a Notice to Proceed, issued by the Landmarks Preservation Commission, in accordance with the provisions of the Landmarks Law:

(a) "PMW" shall mean a Permit for Minor Work as defined by Section 25-310 of the Landmarks Law.

(b) "CNE" shall mean a Certificate of No Effect as defined by Section 25-306 of the Landmarks Law.

(c) "CofA" shall mean Certificate of Appropriateness as defined by Section 25-307 of the Landmarks Law and shall not refer to a Certificate of Appropriateness as defined by Section 25-309.

Pier. "Pier" shall mean a vertical supporting member or element (usually of brick, stone, or metal) placed at intervals along a wall, which typically separate each storefront opening from the adjacent storefront opening (see Appendix A).

Roll-down gate. "Roll-down gate" shall mean a security gate with a mechanism that allows it to roll up and down.

Rules. "Rules" shall mean the rules governing the practice and procedure of the Commission as promulgated in Title 63 of the Rules of the City of New York.

Scissor gate. "Scissor gate" shall mean a security gate with a sideways retractable mechanism.

Security gate. "Security gate" shall mean a movable metal fixture installed in front of a storefront or inside the display window or door to protect the store from theft or vandalism when the store is closed. A security gate can be either the roll-down or scissor variety.

Security gate housing. "Security gate housing" or "housing," shall mean the container that houses the rolling mechanism of a roll-down security gate.

Security gate tracks. "Security gate tracks" shall mean the interior or exterior tracks along the sides of the

storefront (for roll-down gates) or along the top and bottom of the storefront (for scissor gates) that hold the edges of the gates.

Sign. "Sign" shall mean a fixture or area containing lettering or logos used to advertise a store, goods, or services (see Appendix A).

Signage. "Signage" shall mean any lettering or logos in general, used to advertise a store, goods, or services.

Sign band. "Sign band" shall mean the flat, horizontal area on the facade usually located immediately above the storefront and below the second story window sill where signs were historically attached. A sign band may also occur within a decorative bandcourse above a storefront (see Appendix A).

Significant architectural feature. "Significant architectural feature" shall mean an exterior architectural component of a building that contributes to its special historic, cultural, and aesthetic character, or reinforces the special characteristics for which the Jackson Heights Historic District was designated.

Sill. "Sill" shall mean the bottom horizontal member or element of a window or door (see Appendix A).

Skirt. "Skirt" shall mean the bottom finishing piece that hangs from the lower edge of an awning.

Soffit. "Soffit" shall mean the underside of a structural component such as a beam, arch, or recessed area.

Spandrel area. "Spandrel area" shall mean the portion of the facade below the sill of an upper story window and above the lintel of the window or display window directly below it or above the lintel of a window or display window and the building cornice or top of buildings (see Appendix A).

Storefront bay. "Storefront bay" shall mean the area of the storefront defined by and the spanning the two piers.

Storefront infill. "Storefront infill" shall mean the framing, glazing, and cladding contained within a storefront opening in the facade.

Storefront opening. "Storefront opening" shall mean the area of the facade framed by the piers and lintel, which contains storefront infill (see Appendix A).

Transom. "Transom" shall mean a glazed area above a display window or door separated from the display window or door by a transom bar. A transom can be fixed or hinged (see Appendix A).

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections

25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

Rules of the City of New York

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

63 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-03 Routine Maintenance.

A permit is not required to undertake minor ordinary repairs and cleaning such as:

(a) **Window repair.** Ordinary repair and restoration of windows in accordance with the criteria set forth in Section 3-02 (a) of these Rules ("Window Guidelines").

(b) **Painting.** Scraping, priming, and repainting of storefronts to recoat with the same color and finish, provided that such color and finish either existed at the time of designation or was subsequently applied pursuant to a Commission permit.

(c) **Cleaning.** Routine cleaning, including polishing of metal storefronts and routine removal of small amounts of graffiti. Routine cleaning does not include sandblasting and chemical cleaning.

(d) **Repair or replacement of door or window hardware.** Repair or replacement of door or window hardware, excluding security gate replacement.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

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[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

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Rules of the City of New York

63 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-04 Storefront Alterations.

LPC staff will issue a CNE or a PMW (if the work does not require a permit from the Department of Buildings) for storefront alterations and replacement provided the work meets all of the following criteria:

(a) **Retention of historic storefronts.** All existing original or significant historic storefronts shall be retained or repaired if feasible, or if repair is not feasible, replaced in kind.

(b) **Permitted storefront alterations.** (1) **Retention of significant protected features.** All alterations to storefront openings, infill, and fixtures shall preserve all significant original and historic architectural components of the existing storefront, including those presently concealed by non-original materials. Such components shall be retained or repaired if feasible, or if repair is not feasible, replaced in kind.

(2) **Storefront openings.**

(i) **Size and placement.** Storefront infill shall fit within the opening established by the original building piers and lintels.

(ii) **Separation between storefronts and upper floors.** A storefront shall be visually separated from the upper floors or the top of the building by a horizontal architectural component, such as a cornice or sign band.

(3) **Storefront infill.** The design of storefront infill shall be based on:

(i) **Evidence of the original storefront.** An original storefront design shall be determined through references to historic photographs, remnants of historic fabric, or other historic storefronts in the building or similar type of building. (Note: LPC staff can assist you in locating historic photographs.) All such evidence shall be submitted to the Commission with the application; and/or

(ii) **General Jackson Heights storefront infill criteria.** These criteria, set forth below, reflect the typical historic configuration of storefronts in the Jackson Heights Historic District, which were comprised of three horizontal parts: solid bulkhead, display window, and transom.

(A) **Bulkhead.** A storefront shall have a bulkhead. The bulkhead shall be between 12 inches and 24 inches in height. The bulkhead shall be built of or clad with one of the following materials:

(a) brick that matches the existing building facade brick;

(b) stone or cast stone;

(c) panelled wood with molded details; or

(d) metal with molded detail. Corrugated metal shall not be permitted.

(B) **Display window.** A storefront shall have one or more display windows. Display windows shall be framed with wood or metal and shall be glazed with clear glass. Any blocking of the transparency of the glass of portions of the storefront shall be reversible and maintain the exterior surface of the glass. Back-painting or the installation of removable opaque panels behind the glass shall be permitted. The installation of tinted or mirrored glass shall not be permitted.

(C) **Transom.** A storefront shall have a transom above the door(s) if there is sufficient clearance within the existing masonry opening. Transoms are also required above display windows unless it is determined through physical or pictoral evidence that no transom existed originally or if there is not sufficient clearance within the existing masonry opening. Transoms shall be between 12 and 36 inches in height. Transom framing shall match the material and finish of the display window framing. Transoms shall be glazed with clear glass. Back-painted glass or the installation of a solid panel behind the glass shall be permitted when necessary to conceal a dropped ceiling if such ceiling falls below the top of the transom.

(D) **Building streetwall.** The overall placement of the bulkhead, display window and display window transom shall conform to the original building streetwall. A new display window, bulkhead, and door that incorporate external roll-down gates, with a recessed housing that complies with the criteria set forth below in 8-04(b)(6)(ii), may be recessed up to four inches to accommodate the width of the gate tracks.

(E) **Entrance.** A storefront with out-swinging doors shall have an entrance recessed a minimum of 18 inches from the building streetwall. The sides of the entrance recess shall be splayed or angled outward toward the street, unless restricted by the property line. Recessing is optional if a storefront has in-swinging doors.

(F) **Door.** A door shall have at least 75% of its surface area glazed with clear glass and shall be framed in wood or metal. Solid, flat (unpaneled) doors are not permitted.

(G) **Finish.** Non-glazed portions of the storefront infill shall be manufactured in, factory finished with paint or enamel in, or painted on site with one of the following colors or finishes:

(a) Black

(b) Brown

(c) Dark gray

(d) Tan

(e) Dark green

(f) Maroon (dark brownish red)

(g) Silver (stainless steel, clear-finished, or brush-finished aluminum). This finish shall be permitted only for metal storefronts in buildings specified in the Jackson Heights Historic District Designation Report as Art Deco or Modern Style.

(h) Anodized finished on aluminum shall be black or silver only. Bronze anodized aluminum shall not be permitted.

(4) **Signage.**

(i) **Types of signs permitted on the ground story.**

(A) Back-painted signs on glass doors, display windows or transoms not exceeding 50% of the glazed area. No LPC permit is needed for this type of sign.

(B) Letters and logos pin-mounted or painted on a wood, metal, or opaque glass panel that is mounted flat within the sign band or spandrel. Such signs may be illuminated with a shielded or concealed source of light, or with "goose-neck" type fixtures. Such "goose-neck" fixtures shall be placed above the sign and shall not exceed one fixture for every 3 linear feet of sign.

(C) Neon signs installed in the display window behind the glass, provided that the perimeter of the window is not outlined with neon, the transparency of the display window is not materially reduced, and the size of the sign does not exceed 2 feet by 2 feet per display window.

(D) Individual pin-mounted opaque letters and logos illuminated from behind, each glowing with a halo of light, or individual letters with exposed neon tubes (no lenses). The letters or logos may be mounted on a flat metal or wood panel, or affixed to a base measuring no more than 4 inches deep by 4 inches high that houses the electrical conduit.

(E) Signs painted on awnings (if permitted under the awning rules, set forth below in 8-04(b)(5)).

(F) Small identification signs for second story tenants are permitted near the entrance to the second story premises.

(ii) **Types of signs permitted on the second story.**

(A) Back-painted signs on glass windows or transoms not exceeding 50% of the glazed area. No LPC permit is needed for this type of sign.

(B) Letters and logos pin-mounted or painted on a wood, metal or opaque glass panel, which is mounted flat on an area of plain masonry.

(C) Neon signs, installed in the second floor window behind the glass, provided that the perimeter of the window is not outlined with neon, the transparency of the second floor window is not materially reduced, and the size of the sign does not exceed 18 inches by 18 inches per window.

(D) Signs painted on awnings (if permitted under the awning rules, set forth below in 8-04(b)(5)).

(iii) **Types of signs not permitted.**

(A) Projecting banners and flagpoles.

(B) Internally illuminated box signs with plastic or glass lenses.

(C) Internally illuminated fabric signs or awnings.

(D) Flashing signs, moving signs, or strobe-lights.

(E) Neon border outline around perimeter of a window.

(F) Signs or advertising added to bulkheads.

(iv) **General criteria for sign installation.** Installation of the sign shall not damage or obscure significant architectural features of the building and/or the storefront.

(v) **Criteria for sign installation at ground story.**

(A) Ground story signs shall be installed in the sign band, spandrel, display window, transom, or door.

(B) The height of the sign shall not exceed the height of the sign band, or, if there is sign band, the spandrel area above the storefront.

(C) The length of the sign shall not exceed the length of the frontage of the storefront opening.

(vi) **Criteria for sign installation at the second story.**

(A) A second story sign shall relate to the commercial premises located at the second story.

(B) A second story sign may be placed on the building facade either in the spandrel area above the second story windows or centered between second story windows. The placement of second story signage shall be consistent for a single building.

(C) A sign located above a second story window shall not exceed 20 inches in height or the lesser of 6 feet in length or the width of the window(s) for the commercial premises.

(D) A sign placed between windows on the second story shall not exceed 30 inches in height or 3 feet in length.

(E) Second story signs on the facade shall not be externally or internally illuminated, except for neon signs that comply with the criteria set forth above in 8-04(b)(4)(ii)(C).

(5) **Storefront awnings.** These rules apply to the installation of awnings above ground story storefronts and above upper story windows. For storefronts in the Jackson Heights Historic District, the following criteria apply in lieu of the general awning rule set forth in Section 2-12 of the Rules. If a new storefront is being installed and an awning is desired, the storefront shall incorporate an awning in compliance with the criteria set forth below. Existing awnings in non-compliance with these criteria cannot be maintained unless the applicant can demonstrate to LPC staff that the new storefront installation will not require the removal of the existing awning.

(i) **General awning criteria.**

(A) An awning may be retractable or fixed. If fixed, the awning shall have a straight slope, be open on the sides, and have an unframed, flexible skirt. The awning skirt shall not exceed 10 inches in height. If retractable, the awning shall have a straight slope.

(B) The awning shall be attached to the facade at the lintel or transom bar, except that the awning may be attached

above the lintel and below or within the lower portion of the sign band where:

(a) an existing or permitted roll-down security gate makes it impossible to install the awning at the lintel or transom bar; or

(b) installing the awning at the lintel or transom bar will result in the lowest portion of the awning being less than eight feet above the sidewalk.

Where the awning is installed above the lintel but below or in the lower portion of the sign band, the awning encroachment on the area above the lintel shall be the minimum required to accommodate the conditions described above in subparagraphs (a) and (b).

(C) The length of the awning shall not exceed the length of the storefront opening or the associated window opening and the edges of the awning shall be aligned with the inside face of the principal piers of the storefront, or the window opening.

(D) The underside of the awning shall be open.

(E) The lowest portion of awning shall be at least 8 feet above the sidewalk.

(F) The awning shall project between three feet and six feet from the building street wall.

(G) The awning shall be clad only with water repellant canvas with a matte finish or other fabric of a similar appearance.

(H) A sign may be painted on the awning skirt. Such sign shall not exceed 8 inches in height.

(I) A sign may not be painted on the sloped portion of the awning unless the building has no sign band or spandrel area above the ground floor storefront. Such signs shall be proportionate with the size of the awning, but in no event shall such signs exceed 6 square feet in area per awning.

(ii) **Types of awnings not permitted.** The following types of awnings are not permitted:

(A) Fixed box awnings.

(B) Fixed waterfall or curved awnings.

(C) Novelty awnings.

(D) Translucent or transparent awnings illuminated from within or beneath.

(iii) **Canopies.** Canopies are not permitted.

(6) **Security gates.**

(i) **General requirements.** A security gate shall not obscure or detract from the design and details of an existing storefront and shall be architecturally integrated with the design and construction of a new storefront.

(ii) **Security gates for new storefronts.** If security gates are required, the new storefront shall be constructed with an internally-housed or completely internal security gate system or scissor gates. Subsequent to a new storefront installation, LPC staff will not approve a security gate in noncompliance with the criteria set forth below.

(A) **Roll-down gates.** All roll-down security gates installed pursuant to these rules shall be composed entirely of open mesh or have a solid metal panel at the base that does not exceed the height of the bulkhead it covers.

(B) **Internal gates.** A roll-down security gate may be mounted on the interior of the storefront. An internally mounted gate is required if an externally mounted gate cannot be installed in compliance with the criteria for external gates set forth below in subsection (C).

(C) **External gates.** A roll-down security gate may be mounted on the exterior of the storefront if it (1) does not affect, obscure, or damage historic fabric, (2) the security gate housing is located on the interior of the storefront, or the outer face of the security gate housing is set so as not to protrude beyond the building streetwall, and (3) the security gate tracks are recessed or set into reveals along the sides of the storefront.

(D) **Scissor gates.** Scissor gates are permitted if their installation does not obscure or damage any significant architectural feature.

(iii) **Security gates for existing storefronts.**

(A) An internal gate, scissor gate, or external gate may be installed if the installation is in compliance with the relevant criteria set forth above in 8-04(b)(6)(ii)(A-D).

(B) A replacement external gate that is not in compliance with the criteria set forth above in 8-04(b)(6)(ii)(C) may be mounted on the exterior of the storefront if the following criteria are met:

(a) the existing storefront is not being replaced and the storefront had an exterior roll-down gate at the time of the designation of the Jackson Heights Historic District;

(b) the installation of the new security gate shall not obscure or damage any significant architectural features; and

(c) the security gate housing and tracks shall be finished in a color to match or harmonize with the storefront and the security gate housing will be completely covered by an awning that is installed and maintained in compliance with the awning rules set forth above in subsection 8-04(b)(5); and

(d) the security gate shall be composed entirely of open mesh or shall have a solid metal panel at the base that does not exceed the height of the bulkhead it covers.

(7) **Lighting.**

(i) The installation of lighting conduits and fixtures shall not obscure or damage any significant architectural feature.

(ii) Lighting conduits shall be internal or not visible.

(iii) External light fixtures shall illuminate only the storefront and/or ground story signs.

(iv) The number and size of light fixtures shall be in keeping with the scale of the storefront.

(v) The design of light fixtures shall be utilitarian or shall complement the architectural style and detail of the building.

(vi) Fluorescent and high intensity light shall be permitted only if the source of light is concealed and shielded.

(vii) Recessed light fixtures shall be mounted within the soffits of recessed storefront entrances.

(viii) No separate light fixture shall illuminate any sign with internal illumination.

(8) **Air conditioners/louvers.** Temporary, seasonal air conditioning units shall be installed in transoms over doors. Louvers for built-in air conditioning, heating or ventilation units may be installed at the door or window transoms.

Louvers shall be mounted flush with the plane of the transom, and painted to match the color of the surrounding storefront elements.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

63 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 8*14 PROPOSED ALTERATIONS AND NEW CONSTRUCTION OF STOREFRONTS IN THE JACKSON HEIGHTS HISTORIC DISTRICT

§8-05 Procedure.

(a) **Submission of application.** The rules for making an application are set forth in Chapter 2, Subchapter A ("Application Procedure") of these Rules. The illustrations included in Appendix B provide hypothetical examples of the types of storefronts and storefront installations which are permitted under these rules.

(b) **Review of application.** (1) When the application is complete, a staff member will review the application for conformance with the criteria set forth in this Chapter 8. Upon determination that the criteria of the guidelines have been met, a permit will be issued within 20 business days for a PMW or 30 business days for a CNE, as measured from the day the staff determines that the application is complete.

(2) If the criteria have not been met, the applicant will be given a notice of the proposed denial of the application and an opportunity to meet with the Director of the Preservation Department, or, when the Director is not available, with a Deputy Director, to discuss the interpretation of these rules. The applicant must request such a meeting in writing within 10 business days from the date of the notice of proposed denial.

(3) If an application for work is denied a PMW or CNE under these Rules, the applicant shall be informed of his or her right to file for a CofA pursuant to Title 25, Chapter 3 of the Administrative Code of New York City.

(c) **Illustrations.** Drawings are the most effective way to illustrate the proposed work in a clear and precise fashion. The drawings contained in Appendix B of this Chapter 8 are examples of the types of drawings an applicant will be required to submit to the LPC as components of a complete application. As examples, these drawings have been

simplified to generalize and illustrate many of the definitions and the requirements enunciated in the rules above. Submissions to the Commission must be specifically tailored to individual proposals. Drawings must be made to scale, and include all pertinent dimensions. Applications also may be supplemented, as necessary, with photographs of existing conditions, construction details, materials samples, specifications, and maps, to best explain the proposed work.

HISTORICAL NOTE

Section added City Record July 25, 1996 eff. Aug. 24, 1996.

FOOTNOTES

14

[Footnote 14]: * Chapter added City Record July 25, 1996 eff. Aug. 24, 1996. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to staff permits for storefront alterations in the Jackson Heights Historic District and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review for staff-level permits of applications to construct or alter storefronts in the Jackson Heights Historic District. Applicants with proposals that vary from these rules may seek Certificates of Appropriateness.

58 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 8 - APPENDIX A

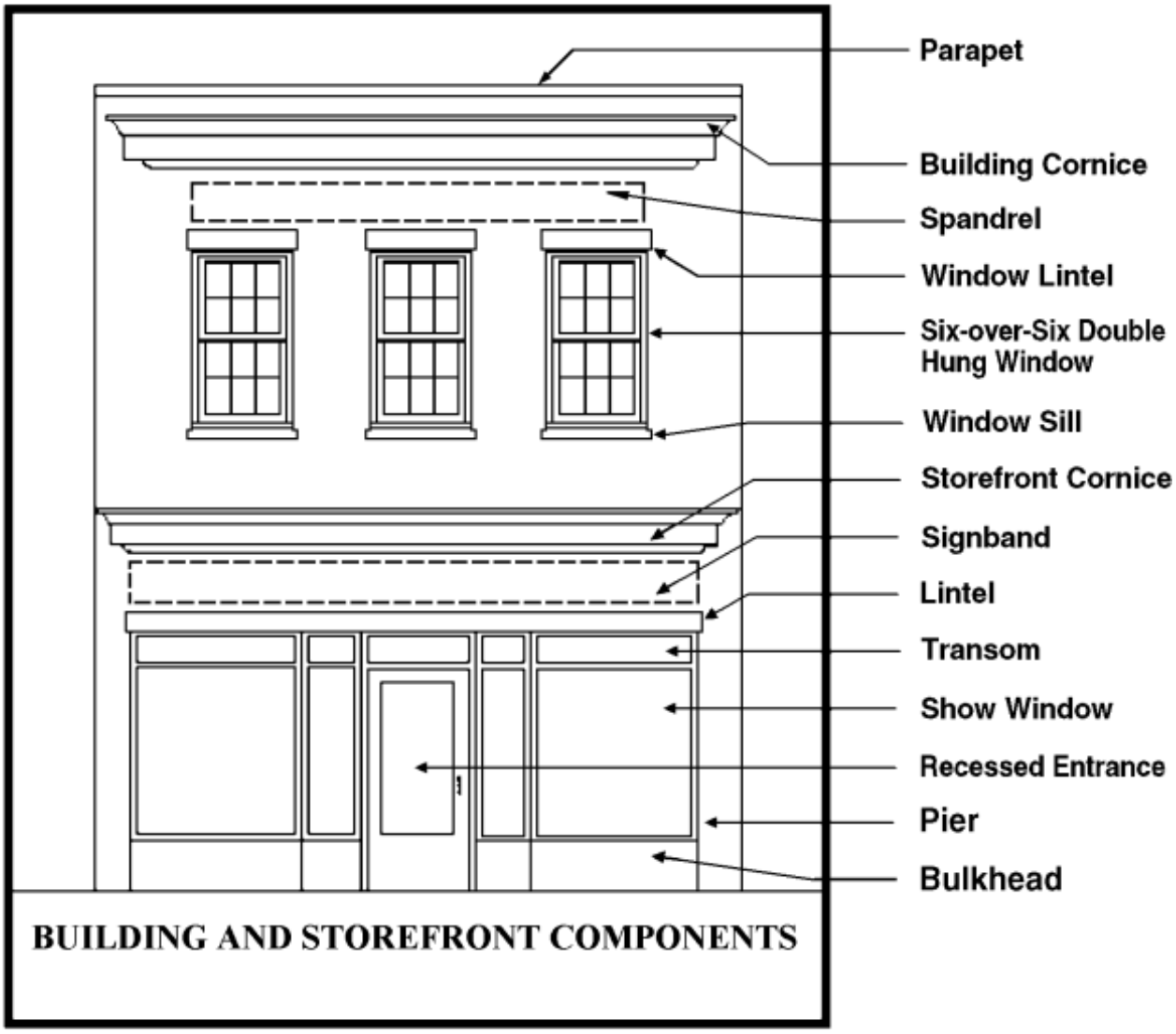
RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX A ILLUSTRATIONS OF DEFINITIONS OF ARCHITECTURAL ELEMENT

APPENDIX A ILLUSTRATIONS OF DEFINITIONS OF ARCHITECTURAL ELEMENT

JACKSON HEIGHTS STOREFRONT RULES



BUILDING AND STOREFRONT COMPONENTS

59 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 8 - APPENDIX B

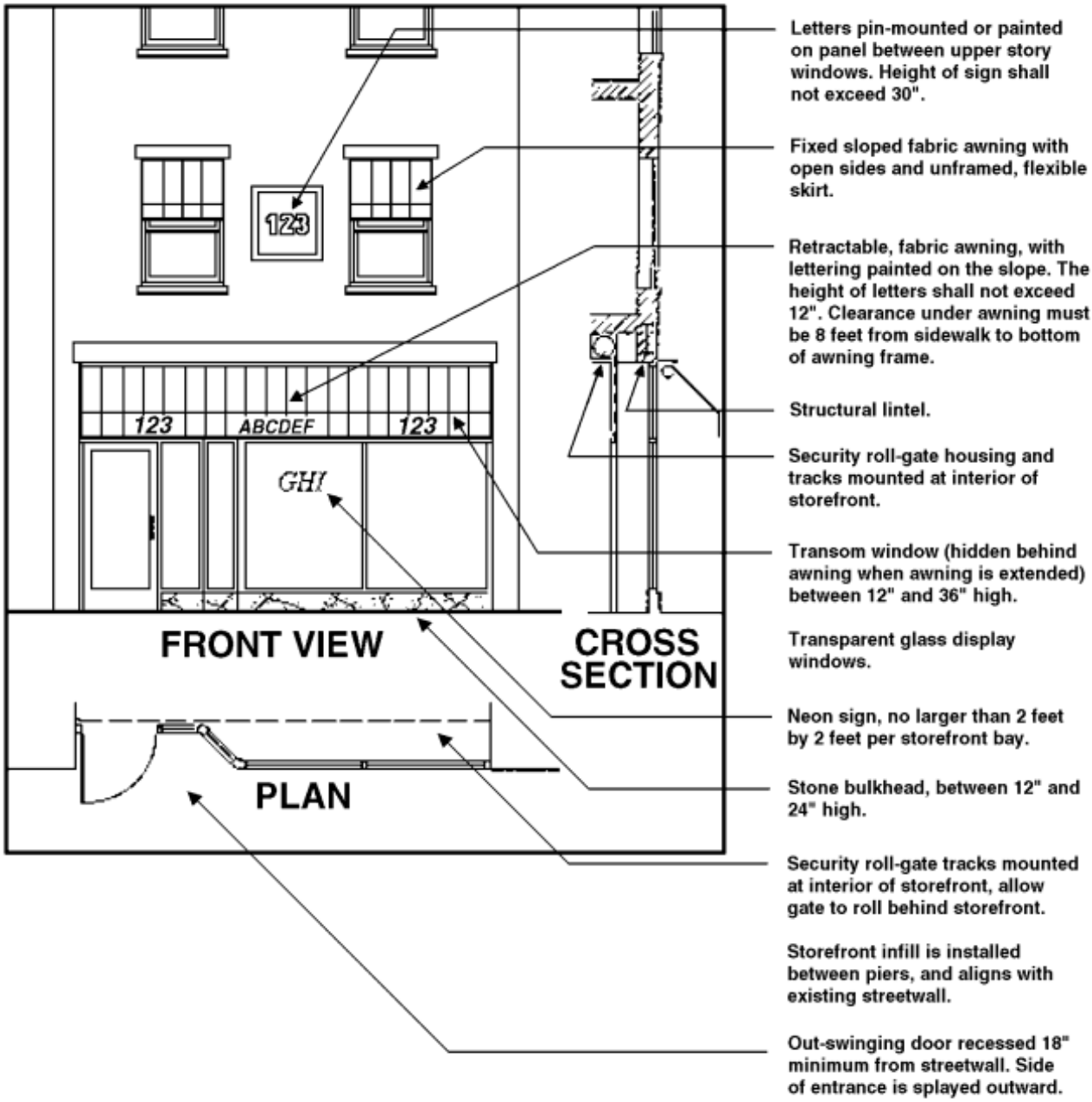
RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

APPENDIX B APPLICATION DRAWINGS

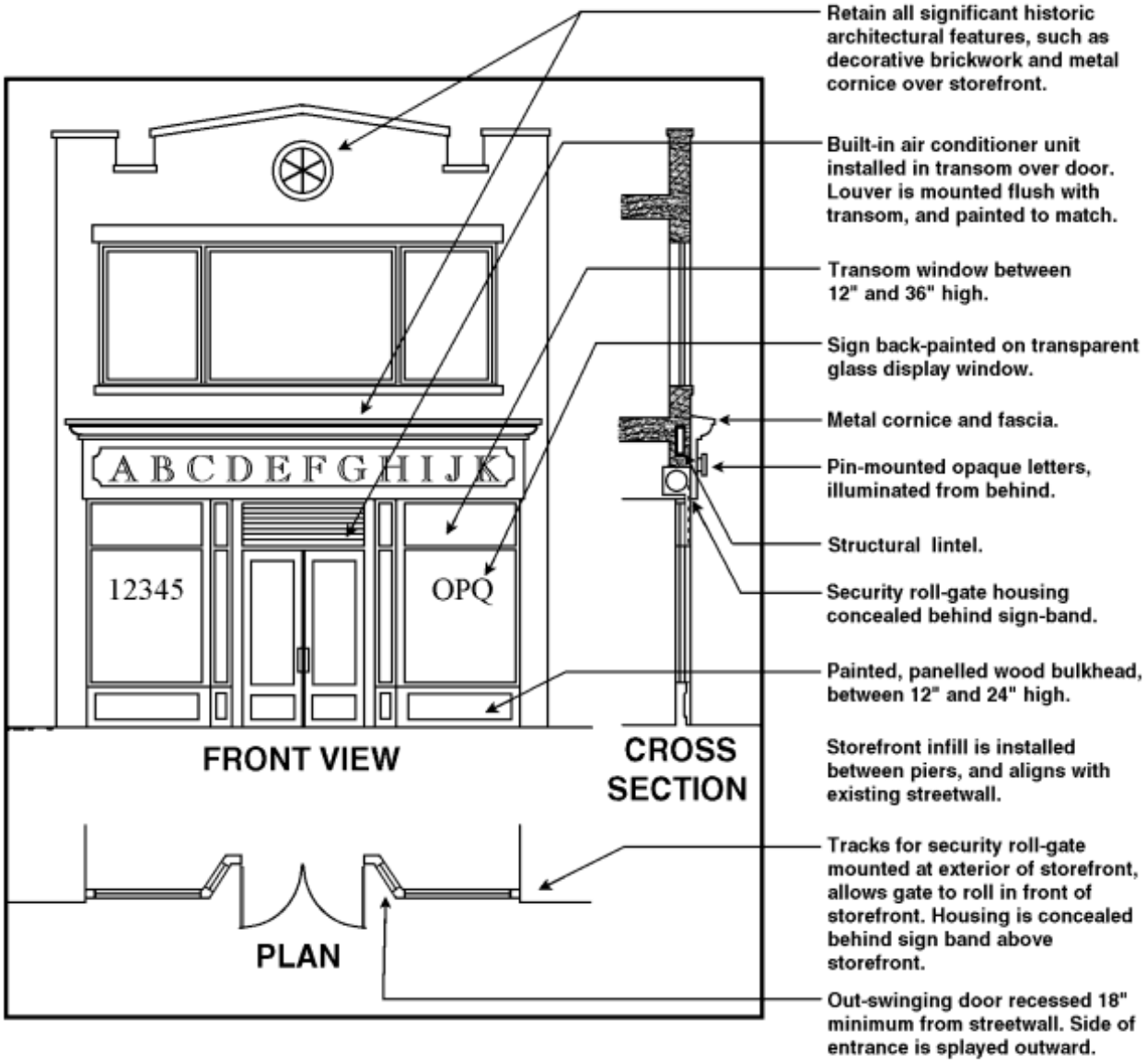
APPENDIX B APPLICATION DRAWINGS

JACKSON HEIGHTS STOREFRONT RULES



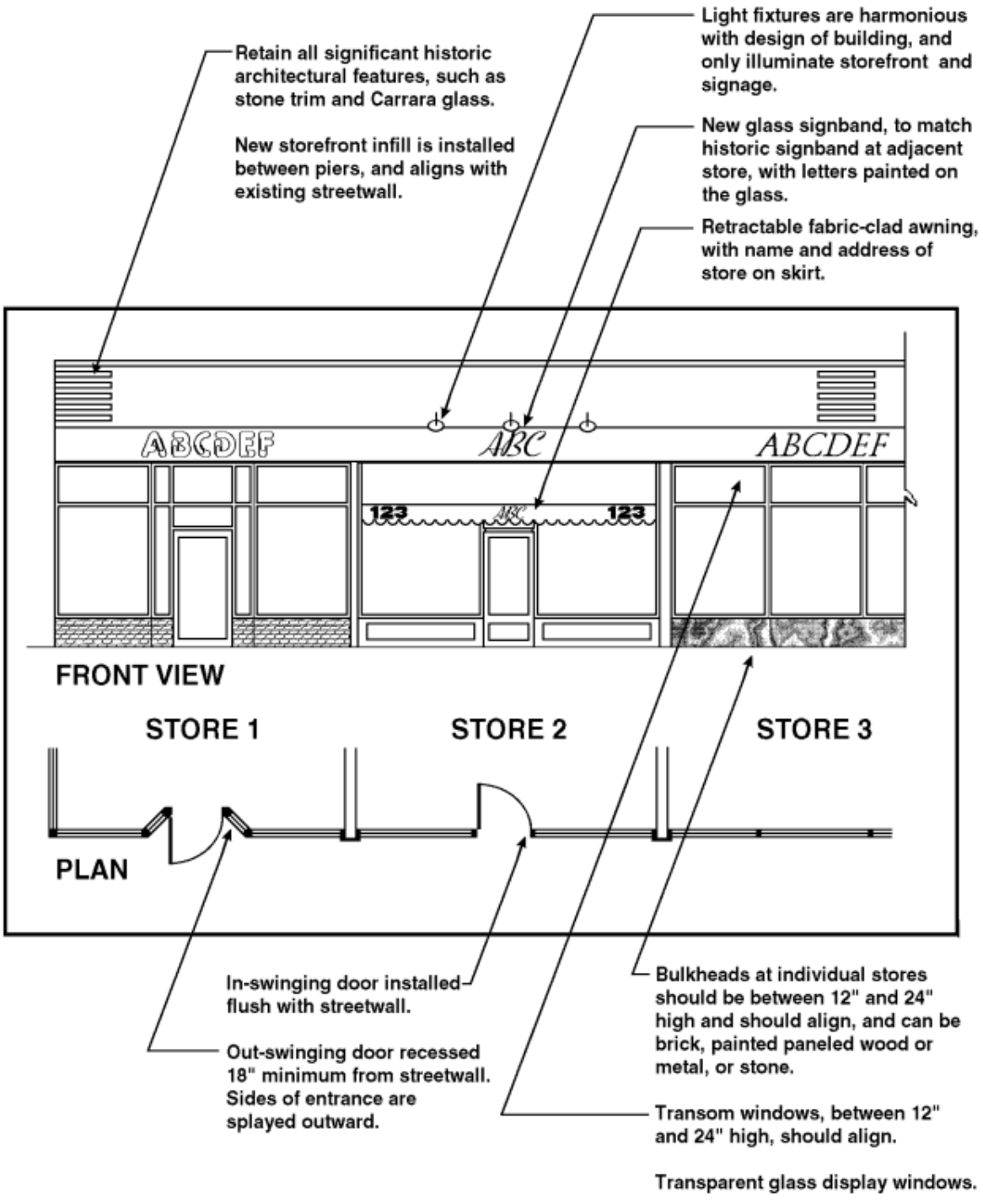
EXAMPLE ONE-STOREFRONT WITH SIDE ENTRANCE

JACKSON HEIGHTS STOREFRONT RULES



EXAMPLE TWO-STOREFRONT WITH CENTER ENTRANCE

JACKSON HEIGHTS STOREFRONT RULES



EXAMPLE THREE-BUILDING WITH MULTIPLE STOREFRONTS

Rules of the City of New York

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

63 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-01 Introduction.

(a) These rules are issued to assist building owners in applying to the Landmarks Preservation Commission (LPC) for approval of applications to undertake repair, rehabilitation, replacement of, or alterations to interior architectural features within designated bank interiors. The rules set forth Commission policy with respect to such repair, rehabilitation, replacement, or alteration and explain the procedures required to apply for a permit. The goal of these rules is to facilitate and encourage the continued historic use of these interiors as banking floors and to facilitate the adaptive reuse of the interior if it ceases to be used as a banking floor.

(b) These rules are based on the following principles:

(1) The significant original visual qualities or character of a designated interior should not be destroyed. The removal or alteration of any significant architectural feature should be avoided whenever possible.

(2) Significant but deteriorated architectural features should be repaired rather than replaced whenever possible.

(3) Certain interior alterations can be approved at staff level in conformance with the procedures set forth in these rules. Other interior alterations require review by the full Commission in accordance with its usual review procedures.

(c) These rules are keyed to underlined portions of the Description section of the Designation Reports for these interior landmarks, which identify significant architectural features requiring protection.

(d) Applicants are encouraged to submit applications for Master Plans which will govern the approval of routine

and continuing alterations such as installation of mechanical and electrical equipment.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

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

63 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-02 Definitions.

As used in these Rules, the following terms shall have the following meanings:

Banking interior. The term "banking interior" shall mean the area of the designated interior historically used for banking operations and any associated interior spaces including, without limitation, entrance vestibules or mezzanines identified in the designation report as part of the designated interior.

Commission. The term "commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

Interior architectural features. The term "interior architectural features" shall have the meaning established in §25-302 of the Administrative Code of the City of New York.

Landmarks Law. The term "landmarks law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. The term "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Non-significant features. The term "non-significant features" shall mean the interior architectural features of the designated interior that the LPC has determined do not contribute to the special historic, cultural, and/or aesthetic character for which the interior was designated. These features comprise all of the interior architectural features of the

interior with the exception of those features that are underscored in the designation report.

Significant features. The term "significant features" shall mean the interior architectural features of the designated interior that the LPC has determined contribute to the special historic, cultural, and/or aesthetic character for which the interior was designated, and therefore require protection under these rules. These features are identified in the designation reports and indicated by underscoring.

Reversible alteration. The term "reversible alteration" shall mean an alteration in which the altered feature can be readily returned to its appearance prior to the alter- ation.

State-of-the-art banking change. The term "state-of-the-art banking change" shall mean a physical alteration to the bank interior that the applicant has determined to be necessary to accommodate changes in technology and/or banking practice. When submitting an application to make such an alteration, the applicant must enclose a verified statement executed by the manager of the bank stating that the bank's ability to perform its banking functions would be impaired if it were unable to make such an alteration.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

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

63 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-03 Eligible Interiors & Significant Features.

(a) The following interior landmarks are subject to these rules:

(1) Former Emigrant Industrial Savings Bank, 51 Chambers Street, Manhattan

(2) Former New York Bank for Savings, 81 Eighth Avenue, Manhattan

(3) Former Greenwich Savings Bank, 1352-1362 Broadway, Manhattan

(4) Former Central Savings Bank, 2100-2114 Broadway, Manhattan

(5) Former Dollar Savings Bank, 2516-2530 Grand Concourse, Bronx

(6) Dime Savings Bank, 9 DeKalb Avenue, Brooklyn

(7) Former Bowery Savings Bank, 130 Bowery, Manhattan

(8) Former Bowery Savings Bank, 110 East 42nd Street, Manhattan

(9) Williamsburgh Savings Bank, 1 Hanson Place, Brooklyn

(10) Williamsburgh Savings Bank, 175 Broadway, Brooklyn

(11) Brooklyn Trust Company, 177 Montague Street, Brooklyn

In addition, any interior landmark or portion thereof which the Commission designates subsequent to the enactment of these rules and which is described as a banking interior in the designation report shall be subject to these rules.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

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

63 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-04 Changes to Non-significant Features.

(a) The LPC staff will issue a Certificate of No Effect on Protected Architectural Features (CNE) or a Permit for Minor Work (PMW) (if the work does not require a permit from the Department of Buildings) within five working days of receipt of a completed application for any proposed work to a non-significant feature if the following conditions are met:

(1) The visible volume and configuration of the banking interior is maintained; and

(2) The staff determines that the alteration will not adversely affect any significant architectural feature and will not detract from the overall visual character of the banking interior.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing

the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

64 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-05 State-of-the-Art Banking Changes.

(a) The LPC staff will issue a CNE or PMW within fifteen working days of receipt of a completed application for a state-of-the-art banking change, if all of the following conditions are met:

(1) the visible volume and configuration of the banking interior is maintained; and

(2) the proposed alteration is the least intrusive means available to achieve a state-of-the-art banking change, such as the installation of ATMs or security devices; and

(3) that (i) the proposed alteration will have no effect on the physical fabric of the significant features or (ii) such effect is reversible, and that the applicant will ensure that the physical fabric of the significant feature will be replaced or restored after the proposed alteration is no longer required to achieve a state-of-the-art banking change.

(b) Any proposed alteration that includes the partial or complete removal or relocation of the teller counter or the removal of a significant portion of its fittings or fixtures requires a Certificate of Appropriateness (CofA) from the Commission in accordance with the procedures and criteria set forth in the Landmarks Law if the teller counter and/or such fittings or fixtures is a significant feature.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

65 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-06 Applications for Partial or Complete Removal of Teller Counters.

(a) Any CofA application that includes the partial or complete removal of the teller counter or the complete or partial removal of the teller counter and its associated fixtures may include a written statement setting forth the reasons why such removal is appropriate.

(b) In its consideration of the appropriateness of the proposed removal the Commission may consider, among other things, whether the partial or complete removal of the teller counter or its fittings or fixtures would damage any other significant architectural feature and the extent to which the proposed alterations would restore the affected portions of the banking floor and/or exposed counter-end to an appropriate condition. In addition, the Commission, in its discretion, may, if the applicant is not a public or quasi-public agency, require the applicant to establish an escrow account or other adequate assurance to provide for the disassembly, removal, secure storage, and replacement of the teller counter and/or its fittings and fixtures for such time and under such conditions as the Commission shall determine and describe in the CofA.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

66 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 9-07

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 9*1 ALTERATIONS TO DESIGNATED BANK INTERIORS

§9-07 Application Procedures.

(a) **Submission of Application.** See Chapter 2, Subchapter A ("Application Procedure") of these Rules.

(b) **Review Procedure.** (1) When the application is complete, staff will review the application for conformance with these rules. Upon determination that the criteria of the rules have been met, a PMW or CNE will be issued.

(2) If the criteria set forth in these rules for a CNE or PMW have not been met, the applicant will be given a notice of the proposed denial of the application pursuant to these rules and an opportunity to meet with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the interpretation of these rules. After this meeting has taken place, if the applicant would like to discuss the matter further, he or she will be given an opportunity to meet with the Chairman for additional discussion of the application.

(3) Applications for work which does not qualify for the issuance of a CNE or PMW in accordance with these rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 9 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, -308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, -307 and 25-310.

The purpose of the rules is to establish the Landmarks Preservation Commission's regulatory policy with respect to certain banking floors that are designated interior landmarks and to assist the public in applying to the Landmarks Preservation Commission for approval of proposed work of this type. These rules define the procedures and standards that the Commission will apply in its review of applications to alter these interiors.

Rules of the City of New York

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

63 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-01 Introduction.

These rules are issued to assist the owners and other persons in charge of improvements or property that is a landmark, interior landmark or located on a landmark site or in a historic district in complying with the nonresidential tenant notification requirements set forth in §25-322 of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement

within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

Rules of the City of New York

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

63 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-02 Notice to Tenant of Landmarks Designation.

The language set forth below shall satisfy the notification requirements set forth in §25-322 of the Landmarks Law.

"The tenant [lessee] is hereby notified that the leased premises are subject to the jurisdiction of the Landmarks Preservation Commission. In accordance with §§25-305, 25-306, 25-309 and 25-310 of the Administrative Code of the City of New York and the rules set forth in Title 63 of the Rules of the City of New York, any demolition, construction, reconstruction, alteration or minor work as described in such sections and such rules may not be commenced within or at the leased premises without the prior written approval of the Landmarks Preservation Commission. Tenant is notified that such demolition, construction, reconstruction, alterations or minor work includes, but is not limited to, (a) work to the exterior of the leased premises involving windows, signs, awnings, flagpoles, banners and storefront alterations and (b) interior work to the leased premises that (i) requires a permit from the Department of Buildings or (ii) changes, destroys or affects an interior architectural feature of an interior landmark or an exterior architectural feature of an improvement that is a landmark or located on a landmark site or in a historic district."

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

Rules of the City of New York

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

63 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 10*1 NOTIFICATION TO LESSEES OF LANDMARKS DESIGNATION AND PERMIT REQUIREMENTS

§10-03 Notification.

(a) **Lease Notification:** Any nonresidential lease or sublease (including any renewal thereof) executed after December 13, 1996 for property or an improvement that is a landmark, interior landmark or located on a landmark site or in a historic district shall include the notice set forth in §10-02 above. Such notification shall be highlighted in bold or underscored or otherwise highlighted so that it is conspicuously set forth.

(b) **Letter Notification:** If an improvement or property is designated as a landmark or an interior landmark or included as part of a landmark site or historic district during the term of a nonresidential lease or a sublease of all or a portion of such improvement or property, the lessor of such lease or sublease shall within 30 days after being notified of such designation by the Landmarks Preservation Commission or person in charge, send the written notice set forth in §10-02 to the nonresidential lessee or sublessee. Such notice shall be highlighted in bold or underscored or otherwise highlighted so that it is conspicuously set forth. Such notice shall be sent by certified or registered mail, return receipt requested to all nonresidential lessees on the first two floors (excluding the basement or cellar) and shall be sent to all other nonresidential lessees by any means reasonably designed to ensure that notice is given.

HISTORICAL NOTE

Section added City Record July 14, 1997 eff. Aug. 13, 1997. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 1997 eff. Aug. 13, 1997. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission is authorized to promulgate rules governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, and buildings in historic districts. Under Section 25-322 of the Administrative Code of the City of New York, an owner or person in charge of a property that is a landmark, interior landmark or is located on a landmark site or within a historic district is required to inform nonresidential tenants, either by sending a written notice or including a statement within the lease or lease renewal, that permits must be obtained from the Landmarks Preservation Commission before commencing certain work on the property.

The purpose of the rule is to provide the public with notification language that will satisfy the requirements of Section 25-322. The proposed rule was not included in the Regulatory Agenda because it is predicated on the enactment of Section 25-322 which became effective on December 13, 1996.

63 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-01 Definitions.

The following definitions shall apply to this chapter:

(a) The term "Landmarks Law" shall mean chapter 3 of title 25 of the Administrative Code of the City of New York.

(b) The term "respondent" shall mean a person who is alleged to have violated the Landmarks Law by creating, authorizing, performing or maintaining work on a landmarks site, within the boundaries of a historic district or to any part of an interior landmark without, or in violation of, a permit from the Landmarks Preservation Commission ("Commission").

(c) The term "stop work order" shall mean an order, issued pursuant to section 25-317.2 of the Administrative Code.

(d) A violation is "corrected" by removing the illegal condition, only where such condition can be easily removed without damage to underlying building material and where such removal does not require a permit from the Commission. For example, a violation for the installation of a sign or awning without a permit may be corrected by removing the sign or awning, if such removal does not result in damage to the underlying building material. Correcting a violation does not include or otherwise permit the reinstallation of a preexisting condition or the installation of a substitute condition. For example, a violation for the installation of a sign or awning without a permit, where such installation involved the removal of a preexisting sign or awning, may not be corrected by reinstalling the prior sign or awning, or installing a different sign or awning. A violation is not corrected for purposes of section 25-317.1b(6) of the

Landmarks Law if the same or a similar illegal condition is installed within 180 days of the respondent's representation to the Commission that the violation has been corrected.

(e) A violation is "legalized" when the Commission issues a permit approving and authorizing the work that was done without a permit.

(f) A violation is "cured" where the Commission issues a permit authorizing modifications to the illegal condition to make it appropriate, or where the Commission authorizes work to replace the illegal work, and the modification or replacement work is completed and the Commission has issued a Notice of Compliance.

(g) For purposes of sections 11-03, 11-04 and 11-06, the term "mail," "mailed" and "mailing" shall mean first class United States mail or express or overnight delivery to a respondent as follows:

(1) Where the respondent is an owner, the warning letter, notice of violation or stop work order shall be mailed to the owner's address as contained in the records of the Department of Finance for purposes of the assessment or collection of real estate taxes or as contained in the records of the Commission for purposes of the implementation or enforcement of the relevant portions of the charter or administrative code.

(2) Where the respondent is a tenant or occupant of the premises where the violation occurred, the warning letter, notice of violation or stop work order shall be mailed to the address where the violation occurred.

(3) Where the respondent is a contractor or other person who performed or was in charge of overseeing the work that was done without, or in violation of, a permit, the warning letter, notice of violation or stop work order shall be mailed to the contractor's or person's business address as generally advertised or represented to the public, unless such contractor or other person is the owner, tenant or occupant.

(4) Where the respondent is any other person in charge of a designated improvement or improvement parcel, the warning letter, notice of violation or stop work order shall be mailed to such person's business address, as generally advertised or represented to the public, or as such address is contained in the records of the Department of Finance for purposes of the assessment or collection of real estate taxes or as contained in the records of the Commission for purposes of the implementation or enforcement of the relevant portions of the charter or administrative code.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

71 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-02 Enforcement of Notices of Violation.

All first Notices of Violation ("NOV") issued after July 5, 1998 for a Type A or Type B Violation shall be heard at the Environmental Control Board ("ECB") or its successor. For Type A Violations, all second and subsequent NOVs for the same condition shall be heard at the Office of Administrative Trials and Hearings ("OATH") or its successor. For purposes of this subchapter, OATH shall be authorized to issue final, binding decisions. For Type B Violations, second and subsequent NOVs shall be heard at the ECB. Notices of violation for violating a stop work order may be heard at either ECB or OATH.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior

landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

72 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-03 Service of Notice of Violation.

In addition to the service requirements of the court or tribunal at which a NOV is to be heard, a NOV may be served by mailing such notice of violation to a respondent.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the

provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

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

63 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-04 Warning Letter.

Subject to the exceptions set forth in section 25-317.1b(1) of the Administrative Code, the LPC shall mail a warning letter to a respondent prior to the issuance of a NOV. The warning letter shall inform the respondent that the LPC believes a violation of the Landmarks Law has occurred at the subject premises and shall also: (1) describe the violation in general detail; (2) warn the respondent that the law authorizes civil and criminal penalties for violations; (3) notify the respondent that a NOV may be served unless, within 20 working days of the date of the warning letter, the violation is corrected or an application to legalize or cure the violation is received by the Commission.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior

landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

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

63 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-05 Notice of Violation; Grace Period.

(a) A respondent shall qualify for the grace period set forth in section 25-317.1b(6) of the Administrative Code by delivering, at least 14 days prior to the hearing date set forth in the NOV, the following to the Commission:

(1) Admission of liability, and

(2) proof, satisfactory to the Commission, that the violation has been corrected, or

(3) an application to legalize or cure the violation.

(b) For purposes of subsection (2), "proof" shall mean the submission of an affidavit or other sworn statement describing the violation and the work performed to correct the violation. The affidavit or sworn statement shall be supplemented by photographs and any other supporting material that demonstrates that the illegal condition has been corrected. The Commission may reject the proof submitted if it does not unequivocally demonstrate that the illegal condition has been corrected.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

Subd. (a) amended City Record June 1, 1999 eff. July 1, 1999.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

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

63 RCNY 11-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 11*1 ADMINISTRATIVE ENFORCEMENT

§11-06 Stop Work Order.

Service. A stop work order may be served: (1) by mailing the stop work order to the respondent; (2) by affixing the stop work order to the place where the violation is occurring. Where the stop work order is affixed, a copy of the order shall also be mailed to the respondent; (3) or orally. Where the stop work order is given orally, the Commission shall within 48 hours thereof mail a copy of the stop work order to the respondent.

HISTORICAL NOTE

Section added City Record July 6, 1998 eff. Aug. 5, 1998. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 6, 1998 eff. Aug. 5, 1998. Note Statement of Basis and Purpose of Rules: The Landmarks Preservation Commission ("Commission") is authorized to Section 25-319 of the Administrative Code of the City of New York (hereafter the "Administrative Code") to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and

25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310. The Commission is also authorized to enforce the provisions of Title 25, Chapter 3 of the Administrative Code through civil and criminal fines and penalties pursuant to the procedures stated in Sections 25-317.1 and 25-317.2.

The purpose of the proposed rules is to implement the administrative enforcement program authorized by Sections 25-317.1 and 25-317.2. In addition to a new Chapter 11 of the Rules of the City of New York, amendments are proposed to Chapter 1, 2 and 7, which concern the manner in which applications are processed and permit duration.

Rules of the City of New York

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

63 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-01 District Master Plans and Authorizations to Proceed.

(a) **Introduction.** The Commission may develop master plans for the historic district, specific types of buildings within a historic district, distinctive areas within the historic district or for landmark sites containing multiple buildings. A district master plan may address common design issues such as storefront design, signage, sidewalk and areaway alterations as well as set forth specific alterations for individual buildings in an historic district or on a landmark site in a comprehensive manner that respects the significant architectural features and particular history of the historic district with allowances for specific building conditions. A district master plan may serve as a research tool or design guide for owners or tenants who wish to make alterations to their buildings. Upon the adoption of implementation rules as set forth in this rule, Commission staff can also issue authorizations to proceed for certain types of alterations or work set forth in the district master plan. A District Master Plan does not preclude the Commission's consideration and approval of applications for proposed work that is not in compliance with the District Master Plan.

(b) **District Master Plans.** Upon its own motion, the Commission may consider a master plan for alterations in a specific historic district, an individual landmark site containing multiple buildings or with respect to certain types of buildings or types of work in a specific historic district ("District Master Plan"). A District Master Plan may be approved by a Certificate of Appropriateness, a Certificate of No Effect on Protected Architectural Features, or a Permit for Minor Work, depending on the work covered by the plan.

(c) **Calendaring.** A District Master Plan will not be scheduled for the Commission's consideration unless the Commission, in its discretion and upon the adoption of a motion, votes to calendar the District Master Plan for a public hearing. A motion to calendar a proposed District Master Plan for further consideration must be approved by the majority of Commissioners present in order to be adopted. The date of the public hearing on the proposed District

Master Plan may be set by the motion to calendar or may be set at some later time by the Chairman, acting at his or her discretion.

(d) **Public Hearing.** If the Commission votes to calendar a District Master Plan for further consideration, a public hearing will be held in accordance with §25-308 of the Administrative Code of New York City and the provisions of Chapter One of these Rules.

(e) **Approval and Implementation.** Following the public hearing, the Commission may vote to approve, approve with modifications, or disapprove the District Master Plan. If the District Master Plan is approved or approved with modifications, the District Master Plan may be implemented by the enactment of Rules in accordance with the City Administrative Procedure Act that specifically reference the District Master Plan ("Implementation Rules"). The Implementation Rules shall establish the scope and applicability of the District Master Plan and shall set forth the application procedures and the criteria for issuance of Authorizations to Proceed ("ATP's", see subsection 12-01(f) below) pursuant to the District Master Plan. Any work permitted under the Implementation Rules pursuant to an ATP must be described with reasonable specificity as to design and materials in the District Master Plan. The public hearing for the proposed District Master Plan may be held concurrently with the public hearing for the Implementation Rules. However, the Commission must vote to approve the District Master Plan before it votes to approve the Implementation Rules and the District Master Plan shall have no force and effect until the Implementation Rules are adopted in accordance with the City Administrative Procedure Act.

(f) **Authorizations to Proceed.** All applications for work pursuant to the District Master Plan must be signed by the building owner in accordance with §2-01 of these Rules and must state that the application is being filed pursuant to the District Master Plan. Each application shall include drawings, specifications and other materials which describe the proposed work in detail. Commission staff will review the application to ascertain whether the proposed work is in accordance with the District Master Plan and the Implementation Rules. If Commission staff determines that the work is in compliance with the District Master Plan and the Implementation Rules, the staff will send the applicant an "Authorization to Proceed" letter ("ATP") allowing the work to commence. The ATP must be obtained prior to the commencement of work and posted on the building while work is in progress. Each ATP shall be valid for four (4) years from the date of such ATP and may be renewed upon application provided that Commission staff determines that the work authorized under the original ATP remains in compliance with the District Master Plan and the Implementation Rules in effect on the date of such renewal. Issuance or renewal of a District Master Plan ATP is contingent upon the work's adherence to the District Master Plan and the materials and plans submitted and approved by Commission staff in connection with the ATP.

(g) **Amendment and Rescission.** Upon its own motion, the Commission may amend or rescind a District Master Plan at any time, provided the Commission first holds a public hearing on the proposed amendment or rescission. In its discretion, the Commission shall calendar a public hearing with respect to such proposed amendment or rescission in accordance with the provisions of §12-01(b) of these Rules. Any Commission action to amend or rescind a District Master Plan shall be in accordance with the provisions of §1-04 of these Rules.

HISTORICAL NOTE

Section renumbered City Record Dec. 6, 1999 eff. Jan. 5, 2000. [Formerly T63 §2-05]

Section added (as §2-05) City Record May 27, 1998 eff. June 26, 1998. [See Note 1]

Subds. (e), (g) amended City Record Dec. 6, 1999 eff. Jan. 5, 2000.

NOTE

1. Statement of Basis and Purpose in City Record May 27, 1998:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

The purpose of the final rule is to enable the Landmarks Preservation Commission to approve master plans for work in historic districts, specific types of buildings in historic districts, distinctive areas within historic districts or landmarks sites containing multiple buildings. Upon the adoption of implementation rules as set forth in this final rule, Commission staff could also issue authorizations to proceed for certain types of alterations or work set forth in the district master plan.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

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

63 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-02 Stone Street Historic District Master Plan Implementation Rules.

(a) **Introduction.** The Stone Street Historic District is a low-scale cluster of early nineteenth-century commercial structures, complemented by several picturesque early twentieth-century buildings designed by prominent architects. The Stone Street Historic District is a distinct enclave amidst the surrounding twentieth-century skyscrapers and is sited on narrow winding streets originally laid out by Dutch Colonists.

The Stone Street Historic District Master Plan Implementation Rules ("Rules") are promulgated to assist building owners who own buildings located within the Stone Street Historic District in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates) and cellar entrances, and to make such buildings accessible to persons with disabilities, that are in accordance with the Stone Street Master Plan approved by the Commission. The Stone Street Master Plan is a master plan governing work to storefronts and cellar entrances, as well as alterations to make buildings within the historic district accessible to persons with disabilities. The Stone Street Master Plan will be the subject of a Certificate of Appropriateness determination at the same public hearing as these Rules.

The Rules set forth herein will permit the LPC staff to issue Authorization to Proceed letters ("ATP") for work that complies with the approved Stone Street Master Plan. The goal of these Rules is to encourage appropriate repair, rehabilitation, replacement and alterations in the Stone Street Historic District by expediting the process of obtaining permits to perform such work. Work that is not in accordance with the Stone Street Master Plan will be reviewed by the Commission in accordance with its usual review procedures as set forth in the Landmarks Law.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall have the meaning set forth in §12-01 of these Rules.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Stone Street Master Plan. "Stone Street Master Plan" shall mean the District Master Plan for the Stone Street Historic District and approved by the Commission as a Certificate of Appropriateness. Copies of the Stone Street Master Plan may be obtained by contacting the Commission's Public Information Specialist at (212) 487-6782 or by writing to the same at 100 Old Slip, New York, New York 10005.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** The buildings located within the Stone Street Historic District are subject to these Rules.

(d) **Permitted alterations pursuant to the Stone Street Master Plan.** The LPC staff shall issue an ATP for work on eligible buildings within the Stone Street Historic District if the staff determines that: (1) the proposed work meets the criteria set forth in the Stone Street Master Plan; and (2) the staff determines that the proposed work will not adversely affect any significant exterior architectural feature of the eligible building or the Stone Street Historic District.

(e) **Application procedures.** (1) **Submission of Application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application Materials.** The applicant must submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant must submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings must be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building.

(f) **Review Procedure.** (1) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(2) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria set forth in the Stone Street Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Stone Street Historic District.

(3) If the criteria set forth in these rules for an ATP have not been met, the LPC staff shall provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the interpretation of

these Rules.

(4) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Dec. 6, 1999 eff. Jan. 5, 2000. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

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

63 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-03 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Upper East Side Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Upper East Side Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Upper East Side Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Upper East Side Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Upper East Side Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Upper East Side Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

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

63 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-04 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Metropolitan Museum Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Metropolitan Museum Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Metropolitan Museum Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Metropolitan Museum Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Metropolitan Museum Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Metropolitan Museum Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

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

63 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-05 Implementation Rules for the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District.

(a) **Introduction.** The implementation rules ("Rules") for the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District ("District Master Plan") are promulgated to passist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake repair, rehabilitation, replacement, or alterations to storefronts (including but not limited to storefront infill, lighting, signage, security gates, windows and doors) along Madison Avenue within the Carnegie Hill (and Extension) Historic District that are in accordance with the District Master Plan approved by the Commission. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed letters ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of storefront alterations while protecting the architecturally and historically significant features of the buildings. The District Master Plan will cover buildings on Madison Avenue that fall within the Carnegie Hill (and Extension) Historic District. Additionally, at corner buildings the District Master Plan will cover the building facades facing both Madison Avenue and the side streets.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the eleven Commissioners, including the Chairman, as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District and approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** As specifically set forth and described in the District Master Plan, these Rules shall cover buildings facing Madison Avenue and located within the Carnegie Hill (and Extension) Historic District, including the commercial portions of a building facing onto both Madison Avenue and a side street.

(d) **Permitted alterations pursuant to the District Master Plan.** The LPC staff shall issue an ATP for work on storefronts in eligible buildings along Madison Avenue if the staff determines that:

(1) The proposed work meets the design criteria for storefront alterations as set forth in the District Master Plan; and

(2) The staff determines that the proposed work would not adversely affect any significant architectural feature of the building.

(e) **Application procedures.**

(1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require probes or other investigations to determine the existing conditions and critical dimensions peculiar to each eligible building storefront.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that adequate materials have been submitted that clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific eligible building in question and is otherwise appropriate to the Carnegie Hill (and Extension) Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall

provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record Nov. 29, 2000 eff. Dec. 29, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 29, 2000:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted Implementation Rules will assist owners in applying to the Landmarks Preservation Commission for approval of storefront work along Madison Avenue within the Carnegie Hill (and Extension) Historic District that complies with the criteria in the District Master Plan for Storefronts on Madison Avenue in the Carnegie Hill (and Extension) Historic District ("District Master Plan"). The District Master Plan also was approved at the Public Meeting of November 14, 2000, and in accordance with the requirements of Title 63, §12-01 of the Rules of the City of New York.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

Rules of the City of New York

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

63 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 12*1 HISTORIC DISTRICT MASTER PLANS

§12-06 Implementation Rules for the District Master Plan for the Douglaston Historic District.

(a) **Introduction.** The implementation rules ("Rules") for The District Master Plan for the Douglaston Historic District ("District Master Plan") are promulgated to assist building owners in applying to the Landmarks Preservation Commission ("LPC") for approval of applications to undertake various types of work on properties located within the Douglaston Historic District, including additions, outbuildings, window replacement, heating, venting and air conditioning, and work on or affecting significant landscape improvements. The rules set forth herein permit the LPC staff to issue Authorizations to Proceed ("ATP") for work that complies with the approved District Master Plan. Work that is not in accordance with the requirements of the District Master Plan will be reviewed by the Commission in accordance with its usual review procedures under the Landmarks Law.

The objective of the District Master Plan is to provide owners, architects and store tenants with design criteria which will allow timely review of proposed alterations while protecting the architecturally and historically significant features of the buildings and historic district's sense of place. The District Master Plan will cover all buildings in the Douglaston Historic District.

(b) **Definitions.** As used in these Rules, the following terms shall have the following meanings:

Authorization to Proceed and ATP. "Authorization to Proceed" and "ATP" shall mean an authorization to proceed as described in §12-01(f) of these Rules.

Commission. "Commission" shall mean the appointed Commissioners, including the Chairman, acting as the Landmarks Preservation Commission as established by §3020 of the New York City Charter.

District Master Plan. "District Master Plan" shall mean the District Master Plan for the Douglaston Historic District approved by the Commission as a Certificate of Appropriateness. A copy of the District Master Plan may be reviewed at the offices of the Commission by appointment.

Landmarks Law. "Landmarks Law" shall refer to §3020 of the New York City Charter and Chapter 3 of Title 25 of the Administrative Code of the City of New York.

Landscape Improvement. "Landscape Improvement" shall mean a physical betterment of real property or any part thereof, consisting of natural or artificial landscape, including but not limited to grade, body of water, hedge, mature tree, walkway, road, plaza, wall, fence, step, fountain, or sculpture.

LPC. "LPC" shall mean the Landmarks Preservation Commission acting in its agency capacity to implement the Landmarks Law.

Terms not otherwise defined in these rules shall have the meanings given them in the Landmarks Law.

(c) **Eligible buildings.** All buildings in the Douglaston Historic District are subject to the District Master Plan*.2

(d) **Permitted alterations.** The LPC staff shall issue an ATP if the staff determines that:

(1) The proposed work meets the criteria set forth in the District Master Plan; and

(2) The proposed work will not adversely affect any significant architectural feature of the building or significant Landscape Improvement, not otherwise permitted by the District Master Plan or other LPC approval.

(e) **Application procedures.** (1) **Submission of application.** See Chapter 2, Subchapter A ("Application Procedure") and Chapter 12 of these Rules.

(2) **Application materials.** The applicant shall submit adequate materials that clearly set forth the scope and details of the proposed work. At a minimum, the applicant shall submit detailed drawings that specifically show the proposed work and all other materials required by the LPC staff. Drawings shall be made to scale, and include all pertinent dimensions. LPC staff may require applicants to submit other materials, including but not limited to photographs of existing conditions, construction details, material samples, specifications, or maps as necessary to clearly explain the proposed work. LPC staff may also require mockups of proposed additions or outbuildings to determine the visibility of such additions or outbuildings, and probes or other investigations to determine existing conditions.

(3) **Review procedure.**

(i) The application will be deemed complete when the LPC staff determines that the materials submitted adequately and clearly set forth the scope and details of the proposed work.

(ii) When the application is complete, LPC staff will review the application for conformity with these Rules. Upon determination that the criteria of the Rules have been met, an ATP will be issued pursuant to §12-01(f). A determination that an ATP should be issued shall mean that the proposed work satisfies the criteria of the District Master Plan and that the work is appropriate to or will have no effect on protected architectural features of the specific building in question and is otherwise appropriate to the Douglaston Historic District.

(iii) If the LPC staff determines that the criteria set forth in these Rules have not been met, the LPC staff shall provide the applicant with a notice of the proposed denial of the application. The applicant may request a meeting with the Director of the Preservation Department, or, in the absence of the Director, with a Deputy Director, to discuss the determination.

(iv) Applications for work that do not qualify for the issuance of an ATP in accordance with these Rules shall be subject to the LPC's usual review procedure as set forth in the Landmarks Law.

HISTORICAL NOTE

Section added City Record June 24, 2003 eff. July 24, 2003. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 24, 2003:

The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in Sections 25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under Sections 25-306, 25-307 and 25-310.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 6, 1999 eff. Jan. 5, 2000. Note Statement of Basis and Purpose of Proposed Rules: The Landmarks Preservation Commission is authorized to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305-308 and 25-310 of the Administrative Code of the City of New York, it determines to be appropriate in accordance with the factors and standards provided under §§25-306-307 and 25-310.

The adopted rules have the following purposes: (1) to create a new Chapter 12 of Title 63, which will contain the District Master Plan rule, currently found at §2-05 of Subchapter A of Chapter 2 of Title 63 of the Rules of the City of New York, and subsequent district master plan implementation rules adopted pursuant to the District Master Plan rule, and (2) to adopt the Stone Street Historic District Master Plan Implementation Rules to assist owners in applying to the Landmarks Preservation Commission for approval of certain work within the Stone Street Historic District. These rules will permit Commission staff to issue permits for work that is in accordance with the Stone Street Master Plan, which was approved by the Commission at a Certificate of Appropriateness public hearing on November 30, 1999 and in accordance with Title 63, existing §2-05, of the Rules of the City of New York.

2

[Footnote 2]: * "Plan" supplied by editor.

82 of 86 DOCUMENTS

Rules of the City of New York

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

63 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-01 Requirement of Fee.

All applicants for a certificate of appropriateness or a certificate of no effect shall pay a fee, as established in accordance with the provisions of this Chapter, except that no fees shall be payable by an owner of the designated building or property affected if the owner is a corporation or association organized and operated exclusively for religious, charitable or educational purposes, or for one or more such purposes, no part of the earnings of which enures to the benefit of any private shareholder or individual, and provided that the property affected is used exclusively by such corporation or association for one or more of such purposes.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of

the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

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

63 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-02 Fee for Approval and Consideration of Applications.

The fees required to be paid under this Chapter are for filing and processing of aplications for certificates of appropriateness and certificates of no effect. The total fee for such work shall be paid by or on behalf of the owner or lessee of the designated building or property before the Department of Buildings issues a work permit or other approval for such work approved in the certificate of appropriateness or certificate of no effect. The fees required to be paid under this Chapter shall be payable each time the owner or lessee of the designated building or property shall apply for a permit or approval from the Department of Buildings for work approved in a certificate of appropriateness or certificate of no effect.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis

and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

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

63 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-03 Definitions.

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

"Designated building or property" shall mean an improvement designated as a landmark, interior landmark or as part of a historic district, and the landmark site(s) associated with such designation, pursuant to §25-303 of the Administrative Code.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic

districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

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

63 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-04 Computation of Fees.

Fees shall be computed as hereinafter provided:

(a) **New buildings.** The fees for permits to construct new buildings shall be computed as follows:

(1) a fee of twenty cents per square foot or fraction thereof, but not less than one hundred dollars per structure, for work subject to a fee payable to the Department of Buildings pursuant to §26-212(1)(a) of the Administrative Code.

(2) a fee of ten cents per square foot, or fraction thereof, but not less than one hundred dollars per structure, for work subject to a fee payable to the Department of Buildings pursuant to §26-212(1)(b) of the Administrative Code.

(b) **Building alterations.** A fee of fifty dollars for the first twenty-five thousand dollars, or fraction thereof, of the cost of the work and four dollars for each additional one thousand dollars, or fraction thereof, of cost over twenty-five thousand dollars for work subject to a fee payable to the Department of Buildings pursuant to §§26-212(2)(a), 212(2)(b), 212(5)(a)(1) and 212(5)(a)(2) of the Administrative Code.

(c) **Demolition and removal.** A fee computed by multiplying the street frontage in feet by the number of stories of the building times one dollar, but not less than one hundred dollars, shall be paid for work subject to a fee payable to the Department of Buildings pursuant to §26-212(4) of the Administrative Code.

(d) **Signs.** A fee of one hundred dollars to erect, install or alter a sign shall be paid for each sign subject to a fee payable to the Department of Buildings pursuant to §26-212(6)(a). An additional fee shall be payable for signs as

follows:

(1) A fee of fifty dollars shall be paid for each ground sign subject to a fee pursuant to §26-212(6)(a)(1) of the Administrative Code.

(2) A fee of fifty dollars shall be paid for each roof sign having a tight, closed or solid surface, where such sign is subject to a fee pursuant to §26-212(6)(a)(2) of the Administrative Code.

(3) A fee of fifty dollars shall be paid for each roof sign that does not have a tight, closed or solid surface and where such sign does not extend beyond thirty-one feet above the roof level, where such sign is subject to a fee pursuant to §26-212(6)(a)(3) of the Administrative Code. A fee of one hundred shall be paid for each roof sign that exceeds thirty-one feet above the roof level.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

Subd. (a), (b) amended City Record Sept. 23, 2009 §1, eff. Oct. 23, 2009. [See Note 1]

NOTE

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

The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. The Commission needs to increase some fees to cover more of the costs associated with issuing permits.

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

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

63 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 63 Landmarks Preservation Commission

CHAPTER 13*1 FEES

§13-05 Effective Date.

The fees required pursuant to this Chapter shall apply to certificates of appropriateness and certificates of no effect issued on or after July 1, 2004.

HISTORICAL NOTE

Section added City Record May 20, 2004 eff. June 19, 2004 with special

provisions of §13-05. [See T63 Chapter 13 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 13 added City Record May 20, 2004 eff. June 19, 2004. Note Statement of Basis and Purpose of Proposed Rule. The Landmarks Preservation Commission is authorized, pursuant to §25-319 of the Administrative Code of the City of New York, to promulgate regulations governing the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks and buildings in historic districts. The Commission issues permits authorizing work on such designated landmarks which, following procedures stated in §§25-305, 25-306, 25-307, 25-308 and 25-310 of the Administrative Code, it determines to

be appropriate in accordance with the factors and standards provided under §§25-306, 25-307 and 25-310. In order to maintain its permit issuance services the Commission needs to impose fees to cover the cost of the issuance of permits.

Rules of the City of New York

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

66 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-01 Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively mean and include each of the meanings set forth:

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Department. "Department" means the Department of Business Services.

Farmer. "Farmer" means any person growing agricultural products, on a farm registered with the Department, for sale or consumption within the City.

Market. "Market" means any building, structure or place owned by the City or located on property owned by the City or under lease to or in the possession of the City or any part of a street, avenue, parkway, plaza, square or other public place designated by law, ordinance or by the Commissioner to be used or intended to be used as a public market for the buying, selling or keeping for sale of food, flowers or ornamental plants.

Merchandise. "Merchandise" means any commodity, fluid, cargo, goods, equipment, material or container.

Person. "Person" means any natural person, corporation, partnership, society, organization of persons, company, association, cooperative, joint stock company or firm.

Tenant. "Tenant" means any lessee, licensee, permittee or occupant of any Market.

Vehicle. "Vehicle" means any automobile, truck, bus, motorcycle, cart, wagon or other driven conveyance, bicycle or trailer.

HISTORICAL NOTE

Commissioner amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Department amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Tenant amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Rules of the City of New York

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

66 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-02 Scope and Construction of Rules and Regulations.

(a) **Scope.** This chapter shall be applicable to all markets and shall regulate the use thereof by all persons.

(b) **Construction.** This chapter shall be construed as follows:

(1) Any prohibited act shall extend to and include the permitting, allowing, causing, procuring, aiding or abetting, directly or indirectly of such act;

(2) No provision hereof shall make unlawful the act of any employee of the department in the performance of his official duties;

(3) Any act prohibited by this chapter provided it is not otherwise prohibited by law, ordinance, rule or regulation shall be lawful if performed under, by virtue of and strictly in compliance with the written authorization of the Commissioner.

(c) **Other requirements.** This chapter is in addition to and supplements all laws, ordinances, rules and regulations of the City, New York State and Federal Government and all terms and obligations set forth in any lease, license or permit.

Rules of the City of New York

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

66 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-03 Administration.

(a) **Use, occupancy or doing business.** Use, occupancy or doing business in any market for any purpose is prohibited except by written lease, license or permit of the Department.

(b) **Sale of merchandise.** The sale of merchandise other than that authorized by the Commissioner is prohibited.

(c) **Hours of operation.** Hours of operation of any market may be regulated by the Commissioner.

(d) **Assignment or transfer of lease, license or permit.** Unless otherwise provided for therein, no lease, license or permit shall be assigned or transferred.

(e) **Employees.** Each tenant shall be responsible for the acts and omissions of his employees in connection with the conduct of the tenant's business.

(f) **Entry.** Entry into any Market may be regulated by the Commissioner. No fee shall be charged for entry into a Market or for parking therein, nor shall any existing fee be increased, unless the Commissioner shall have first approved the amount of such fee. The Commissioner may establish or authorize the establishment of an identification card and pass system as a requisite for entry of any persons into any Market.

(g) **Information to be furnished to the Commissioner.** Each tenant shall furnish to the Commissioner such

information as the Commissioner may require concerning the business conducted by the tenant in any market, including but not limited to his business books, ledgers, payroll records, lists of employees and suppliers. Each tenant shall permit the Commissioner, or any person designated by the Commissioner, to enter his premises whenever in the sole discretion of the Commissioner such entry is necessary. Each tenant whose main office is located at any market shall furnish the Commissioner with two recent passport size photographs of tenant's operating principals.

(h) **Replacement of light bulbs.** Each tenant at his sole expense shall replace all defective and missing light bulbs within the premises occupied by him and any adjacent loading platforms or the Department may replace same at the sole expense of the tenant.

(i) **Condition of premises.** Each tenant shall put, keep and maintain the premises described in his lease, license or permit or any other space occupied by him and all equipment therein in good repair and condition, including painting, but shall not be required to make structural additions or repairs, unless expressly provided for in the lease, license or permit.

(j) **Surrender of premises.** At the expiration or sooner termination of a lease, license or permit, the tenant shall quit and surrender the premises described therein in good order and condition and well and sufficiently painted and repaired. Upon the removal of a tenant from the space occupied by him the Commissioner in his sole discretion may, without notice to the tenant, take possession of or cause removal therefrom of any and all alterations, additions, improvements, fixtures, equipment and other material left by the tenant and the tenant shall pay the cost of any such removal or restoration of the premises.

HISTORICAL NOTE

Subd. (f) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996.

Rules of the City of New York

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

66 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-04 Farmers' Markets.

(a) **Carrier license required.** No carrier shall offer, tender or render any service in any farmers' market unless licensed by the Department.

(b) **License plates and badges.** License plates, permits and badges shall be conspicuously displayed at all times.

(c) **Charges.** Each farmer shall pay additional charges as specified by the Commissioner for each additional load in any one day, commonly termed a "drop load."

(d) **Markings.** All bags, crates or other containers used in the sale or display of farm products in any farmers' market shall be plainly marked with the name and address of the farmer and with the quantity of the contents in terms of weight, measure or numerical count.

(e) **Area condition.** The markets shall be cleared of all vehicles, produce and refuse at closing time, daily and whenever ordered by the Commissioner.

Rules of the City of New York

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

66 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-05 Prohibitions and Restrictions.

(a) **Property and equipment.** No person shall damage, remove or destroy any property or equipment.

(b) **Litter, rubbish and refuse.** No person shall take into, carry through, leave in, throw, or discharge into or on any market any rubbish, litter or refuse.

(c) **Pollution of water.** No person shall discharge into or leave in tidal water, sewage or drainage which may result in the pollution of water.

(d) **Drains and sewers.** No person shall perform any act which may tend to damage, choke, or clog drains or sewers.

(e) **Conduct.** No person shall:

(1) Disobey any order of any employee of the Department or other employee of the City or disobey or violate any notice, prohibition, instruction or direction of the Department or of any other City agency;

(2) Solicit or beg alms, subscriptions for any purpose;

(3) Annoy or harass any person;

(4) Interfere with, encumber, obstruct or render dangerous any part thereof;

(5) Do any act tending to or amounting to a breach of peace;

(6) Refuse or attempt to avoid any charge, toll, price or fee fixed by the Commissioner;

(7) Refuse to surrender any manifest, bill of loading, delivery slip or ticket to any employee of the Department;

(8) Engage in, instigate or encourage a fight or other disturbance;

(9) Do any act injurious to any person, animal or property.

(f) **Explosives, firearms and weapons.** (1) No person shall bring into any market or have in his possession any firearms, illegal knives, hatchets, machetes, slingshots, fireworks or other dangerous instruments or explosives.

(2) Firearms carried by any person under a permit issued by the Police Commissioner of the City shall be registered with the Commissioner.

(g) **Gambling.** No person shall play any game of chance, participate in the conduct of an illegal lottery, or use any slot machine, gaming table or instrument or have in his possession any implements or devices commonly used, or intended to be used, for gambling purposes.

(h) **Photographs.** No person shall take moving pictures or photographs for advertising, commercial or publicity purposes or buy, sell or publish negatives or prints or exhibit such negatives or prints in public, or use pictures or photographs of any market area or building, except by prior written permission of the City.

(i) **Peddling.** Peddling and hawking is prohibited. Possession of objects or material in quantities, packages or containers customarily associated with peddling shall be deemed to be prima facie evidence of exhibiting or offering for sale.

(j) **Fires.** No person shall kindle, build, maintain or use an open fire or smudge pot.

(k) **Boating.** No boat or vessel shall be laid up, stored, repaired or placed for any purpose in any market.

(l) **Construction work.** No person or agency shall perform construction work or repairs of any kind or work incidental thereto, or install in or remove equipment from any market except with the prior written authorization of the Commissioner.

Rules of the City of New York

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

66 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-06 Vehicles and Traffic.

(a) **Traffic control.** (1) A rate of speed exceeding twenty-five miles per hour is prohibited.

(2) All persons using any market lane, street or avenue shall obey and comply with any traffic direction of any police officer or employee of the Department indicated by gesture or otherwise and with any direction on any parking or traffic sign posted by the Department or by any other City agency along such routes.

(3) All vehicles shall be driven carefully and under control at all times and no person shall permit a vehicle to be driven or propelled recklessly or negligently or in such manner as to endanger or injure persons or property.

(b) **Obstruction of traffic.** No person shall obstruct the movement of traffic or stop, stand or park a vehicle, freight car or other conveyance except at designated and posted places.

(c) **Disabled vehicles.** All disabled vehicles must be promptly removed from paved roadways and removed from the market within three hours. If not removed, such vehicles will be removed by City personnel or licensed tow operators at the expense of the owners and neither the City nor such licensed tow operators shall be liable for any damage caused to such vehicles.

(d) **Repairs to vehicles.** No person shall grease, lubricate or make repairs, except of a minor and emergency

nature, to any vehicle.

(e) **Vehicle and Traffic Law and Department of Transportation Regulations.** The New York State Vehicle and Traffic Law and the Traffic Rules and Regulations of the City Department of Transportation are hereby established as rules and regulations of the Commissioner and shall be in effect in all markets as though set forth herein in full and the Traffic Rules and Regulations set forth herein are in addition to the same.

Rules of the City of New York

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

66 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-07 Misrepresentation.

There shall be no misrepresentation of any kind with respect to merchandise offered for sale nor the taking of any unfair advantage of a purchaser nor any attempt to take such unfair advantage. Only scales tested and approved by the City shall be used to weigh merchandise offered for sale.

Rules of the City of New York

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

66 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-08 Market Conditions and Practices.

(a) **Pest control.** Each tenant shall provide, at his sole expense, exterminator service against rodent and insect infestation within the premises used or occupied.

(b) **Signs.** No signs of any description shall be displayed except with prior written permission of the Commissioner.

(c) **Sanitary condition.** All buildings, stores, house trailers, spaces and sidewalks adjacent hereto and all tools and fixtures used in connection therewith shall be kept in a clean and sanitary condition and shall at all times be subject to inspection. Each tenant shall provide approved containers for the collection of dirt, rubbish and refuse and shall not obstruct any sidewalk, aisle, lane, street or avenue.

(d) **Manifests and delivery slips.** Where terminal charges are in effect, it shall be the tenant's responsibility to insure that true manifests has been surrendered to the toll collectors for all delivery merchandise unless such charges have been paid upon the entry of the merchandise into the market.

(e) **Use of sidewalk areas and loading platform.** Storage and display of material on sidewalks or loading platforms shall be confined to designated areas. Pedestrian walks shall be kept clear at all times except during normal loading and unloading operations.

(f) **Termination or revocation of lease, license or permit.** Notwithstanding any provision set forth therein, any lease, license or permit for use or occupancy in any market may be terminated or revoked by the Commissioner, on written notice to the tenant, for the violation of any of this chapter.

9 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-09 Penalties.

(a) Any person who violates any of this chapter shall be liable to forfeit and pay a civil penalty in the sum of not more than $100 for each violation.

(b) Any person who violates any of this chapter shall be guilty of an offense triable by a judge of the New York City Criminal Court, and punishable by a fine of not less than $25 and not more than $250 for each offense or by imprisonment not exceeding ten (10) days, or by both.

10 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A MARKETS GENERAL

§1-10 Saving Clause.

For the purpose of determining the effect of any provision of a rule or regulation heretofore promulgated and repealed and repromulgated by this chapter such provision shall not be considered a new promulgation but shall be construed to be a continuation of the provision so repealed and repromulgated.

Rules of the City of New York

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

66 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-11 Scope.

This subchapter shall be applicable to each public wholesale market under Chapter 1-B of Title 22 of the Administrative Code of the City of New York, provided, however, that enforcement of this subchapter shall be stayed, except as to the New York Terminal Produce Market, and any area adjacent to such market as identified by the Commissioner pursuant to subdivision h of §22-251 of the Administrative Code of the City of New York, until thirty days after the Commissioner has published in the City Record notice that enforcement will commence, in whole or in part, with respect to a particular market or adjacent area.

HISTORICAL NOTE

Section amended City Record Feb. 20, 1998 eff. Mar. 22, 1998. [See

Note 1]

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 20, 1998:

Section 22-251(h) of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to identify by rule areas in the vicinity of a designated wholesale public market where one or more wholesale businesses or market businesses, operate. These rules are being amended to identify such an area in the vicinity of the New York Terminal Produce Market, and to require wholesalers and market businesses operating in this area to comply with the registration and other requirements set forth in Local Law 28 of 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-12 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Applicant. The term "applicant" shall mean, if a business entity submitting a registration application, the entity itself and all the principals thereof; if an individual submitting an application for a photo identification card, such individual.

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

Commissioner. The term "Commissioner" shall mean the Commissioner of Business Services.

Department. The term "Department" shall mean the New York City Department of Business Services.

Labor union. The terms "labor union" or "labor organization" refers to unions or organizations which represent or seek to represent, for purposes of collective bargaining, employees directly involved in the movement, handling or sale of goods in the markets. Notwithstanding the foregoing, such terms shall not include: (i) a labor union that represents or seeks to represent fewer than two hundred employees in any public wholesale market or combination of public wholesale markets in the City of New York; (ii) a labor union representing or seeking to represent clerical or other office workers, construction or electrical workers, or any other workers temporarily or permanently employed in a

public wholesale market for a purpose not directly related to the movement, handling or sale of goods in such market; (iii) affiliated national or international labor unions of local labor unions required to register pursuant to this provision.

Market business. The term "market business" shall have the meaning provided in §22-251(e) of the Code.

Market manager. The term "market manager" shall mean a person designated by the Commissioner to supervise operations in a public wholesale market. Such supervision shall include, without limitation: implementation of these rules and the authority to enforce violations of any provision of Chapter 1-B of Title 22 of the Administrative Code or these rules; supervision of Department staff employed in the markets; response to complaints relating to the operation of businesses in the markets; examination of documents required to be maintained by a registrant pursuant to this subchapter; referrals, where appropriate, to any law enforcement, adjudicatory, investigative or prosecutorial agency of matters occurring within the markets; and such other functions and duties as the Commissioner may assign consistent with the provisions of this subchapter.

Officer. The term "officer" shall mean any person holding an elected position or any other position involving participation in the management or control of a wholesale trade association or of a labor union or labor organization required to register pursuant to §1-20.2 or §1-20.4 of this subchapter.

"Public wholesale market" or "market" shall mean any building, structure or place owned by the City or located on property owned by the City or under lease to or in the possession of the City or any part of a street, avenue, parkway, plaza, square or other public place that has been designated as a public market by resolution of the former Board of Estimate of the City or a local law enacted by the City Council to be used or intended to be used for the wholesale buying, selling or keeping of food, flowers or ornamental plants; except that the term "public wholesale market" shall not, unless otherwise set forth in this subchapter, include any building, structure or place within the Fulton Fish Market Distribution Area or other seafood distribution area as defined in §22-202 of the Administrative Code of the City of New York. For purposes of this subchapter, the term "public wholesale market" shall also include the area adjacent to the New York Terminal Produce Market beginning at the point where the westerly street line of Garrison Avenue intersects the northerly street line of Lafayette Avenue; thence easterly along the northerly street line of Lafayette Avenue to the easterly street line of Halleck Street; thence southerly along the easterly street line of Halleck Street to the southerly street line of Ryawa Avenue; thence westerly along the southerly street line of Ryawa Avenue to the westerly street line of Manida Street; thence northerly along the westerly street line of Manida Street to the southerly street line of Viele Avenue; thence westerly along the southerly street line of Viele Avenue to the westerly street line of Tiffany Street; thence northerly along the westerly street line of Tiffany Street to the southerly street line of Oak Point Avenue; thence westerly along the southerly street line of Oak Point Avenue to the westerly street line of Barry Street; thence northerly along the westerly street line of Barry Street to the southerly street line of Leggett Avenue; thence westerly along the southerly street line of Leggett Avenue to the westerly street line of Garrison Avenue; thence northerly along the westerly street line of Garrison Avenue the point of beginning, and the premises known as 240 Food Center Drive.

Principal. The term "principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer, director and stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; of another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this subchapter (i) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (a) such individual, (b) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (c) the children, grandchildren and parents of such individual, (d) a partnership in which such

individual is a partner, in proportion to the partnership interest of such individual, and (e) a corporation in which any of such individual, the spouse, children, grandchildren and parents of such individual own fifty percent or more in value of the stock; (ii) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (iii) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Registration. The term "registration" shall mean:

(a) wholesaler registration or Market business registration as required pursuant to §22-253 of the Code and §2-03 of this subchapter;

(b) labor union or labor organization registration as required pursuant to §22-264 of the Code and §2-12 of this subchapter;

(c) wholesale trade association registration as required pursuant to §22-265 of the Code and §2-14 of this subchapter.

Wholesale trade association. The term "wholesale trade association" shall have the meaning provided in §22-251(k) of the Code.

Wholesaler. The terms "wholesaler" or "wholesale business" shall have the meaning provided in §22-251(j) of the Code.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Public Wholesale Market definition amended City Record Feb. 20, 1998

eff. Mar. 22, 1998. [See Note 1 after T66 §1-11]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-13 Wholesale Business and Market Business Registration Re- quired.

(a) On or after fifteen days following the effective date of this subchapter, no Wholesale business or Market business shall operate in a Public Wholesale Market unless such business has been registered with the Commissioner and received a registration number from the Market Manager.

(b) Notwithstanding subdivision a of this section, a Wholesale business or Market business which has been operating in a Public Wholesale Market as of the effective date of Local Law 28 of 1997, and which has filed a registration application with the Commissioner within fifteen days of the effective date of this subchapter, may continue to operate in the Market Area beyond fifteen days following the effective date of this subchapter unless and until (1) the Commissioner has denied the application for registration of such business, or (2) in cases where the Commissioner has required any or all of the principals of such businesses to be fingerprinted, submit background information and appear for an interview pursuant to §§22-253(b) and 22-259(a) of the Code, such principal has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting, or to submit the required information, or to appear for an interview, or to submit the fees for a background investigation in accordance with §1-25 of subchapter 1-B of this title. For the purposes of this subdivision, the terms "Wholesale business" and "Market business" shall mean the business entity, and all the principals thereof.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Nov. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-14 Issuance of Registration.

(a) A person wishing to register a Wholesale business or Market business shall provide the information requested in the registration application form provided by the Department, which form shall be signed by all principals of such business, and accompanied by the certification form provided by the Department, fully executed by all principals of such business.

(b) Wholesale businesses and Market businesses are required to notify the Commissioner of any change in the ownership composition of the business, any changes regarding persons employed by the business, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted pursuant to subdivision a of this section during the term of its registration, and shall notify the Commissioner, in writing, of any such change within ten calendar days thereof.

(c) In the event that a registrant notifies the Commissioner of the proposed addition of a new principal (other than a person or entity that becomes a principal through the acquisition of outstanding shares of a business whose equity securities are registered under Federal and State securities laws and publicly traded on a national or regional stock or security exchange) as required by subdivision b of this section, the registrant shall simultaneously submit the registration application form provided by the Department completed, signed and certified by such prospective principal. Except where the Commissioner determines within 15 days, based upon information available to him or her, that the addition of such new principal may have a result inimical to the purposes of this subchapter, the registrant may add such

new principal pending the completion of review by the Commissioner. The Commissioner may waive or shorten such 15 day period upon a showing that there exists a **bona fide** business requirement therefor. The registrant shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of this subchapter. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the registration shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(d) Notification pursuant to this section shall be signed and sworn to before a notary public.

(e) Notwithstanding any provision of this subchapter:

(1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that any or all of the principals of an applicant for registration, or a registrant, lack[s] good character, honesty or integrity, require that such principal[s] (i) be fingerprinted in accordance with §22-259(a)(i) of the Code; (ii) provide to the Commissioner the information requested in the background investigation form provided by the Department within 15 days of such request; (iii) appear to be interviewed by the department of investigation or the Department; and (iv) pay the fee for a background investigation in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to register a Wholesale business or Market business for the reasons set forth in subparagraphs b, c, d and e of §22-259 of the Code, or may defer a decision whether to register such Market business when an indictment or a criminal or civil action is pending as provided in subparagraph (b)(ii) of such section.

(f) A wholesale business or market business denied registration for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code shall be given notice of the reasons for such denial, and may respond in writing to the Commissioner within ten days of mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

15 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-15 Photo Identification Cards Required.

(a) As of fifteen days following the effective date of this subchapter, no person who is an officer, principal, employee or agent of any Wholesale business or Market business operating in a Public Wholesale Market who performs any function directly related to the provision of goods or services to wholesalers or retail purchasers in such market shall perform such function without having been issued a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-252 of the Code. Notwithstanding the foregoing, officers, principals, employees or agents of any Wholesale businesses or Market businesses required to have photo identification cards, and who have filed applications therefor within fifteen days of the effective date of this subchapter and obtained temporary photo identification cards, may continue to perform such functions fifteen days after the effective date of this subchapter unless and until (1) the application of such person for a photo identification card has been denied, or (2) the temporary photo identification card of such person has been revoked, or (3) in cases where the Commissioner has required such person to be fingerprinted, submit background information and appear for an interview pursuant to §22-259(a) of the Code, such person has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting or to submit the required information, or to appear for an interview. This section does not apply to officers, principals, employees or agents of Wholesale businesses to which customers do not regularly come to pick up purchases and that does not deal from such location primarily in perishable products.

(b) Photo identification cards shall be in the possession of principals and employees of Wholesale businesses and Market businesses at all times when such persons are in the market, and shall be produced upon demand by an

authorized employee or agent of the Department, the department of investigation or the police department.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

16 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-16 Temporary Photo Identification Cards and Visitors Passes.

(a) The Hunts Point Terminal Produce Cooperative Association, Inc. is designated by the Commissioner to issue temporary photo identification cards to all officers, principals, employees and agents of Wholesale businesses and Market businesses, and to seasonal employees of Market businesses at the New York Terminal Produce Market, who have made timely applications and tendered the requisite fee payments in accordance with this subchapter. The duties of the Hunts Point Terminal Produce Cooperative Association, Inc. under such designation are to be performed pursuant to such terms and conditions as the Commissioner may impose by written agreement.

(b) Such temporary identification cards shall be valid for a period of one year unless and until the Commissioner has (i) issued or denied a permanent identification card, or (ii) such temporary card has previously been revoked in accordance with the procedures set forth in §1-20 of this subchapter.

(c) The Hunts Point Terminal Produce Cooperative Association, Inc. is designated by the Commissioner to issue visitor passes at the New York Terminal Produce Market.

(d) The Hunts Point Terminal Produce Cooperative Association, Inc. may impose fees and set amounts for such fees for the performance of the functions set forth in this section with the prior written permission of the Commissioner. No change in a fee or amount of such fee imposed pursuant to this section shall be made without prior written permission of the Commissioner.

HISTORICAL NOTE

Section amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 24, :

Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing issuance of photo identification cards and visitors passes and registration of labor unions and labor organizations. These rules are being promulgated to further the Department's ability to implement and enforce these requirements. The rules as finally promulgated reflect changes made in response to public comments.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

17 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-17

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-17 Issuance of Photo Identification Cards.

(a) A person wishing to apply for a photo identification card shall provide the information required in the application form provided by the Department, which form shall be signed and certified under penalty of perjury by the applicant.

(b) Persons required to have photo identification cards shall notify the Commissioner of any material change in the information submitted pursuant to subdivision a of this section, including without limitation, any change in employment, as well as any arrests or criminal convictions, and shall notify the Commissioner, in a signed and notarized writing, of any such change within ten calendar days thereof.

(c) Notwithstanding any provision of this subchapter (1) the Commissioner may, where he or she has reasonable cause to believe that an applicant for or the holder of a photo identification card lacks good character, honesty or integrity, require that such person: (i) be fingerprinted, (ii) provide, within the time required by the Commissioner, the background information required in paragraph (ii) of subdivision a of §22-259 of the Code, and as requested in the background investigation form provided by the Department, (iii) appear to be interviewed by the department of investigation or the Department, and (iv) tender the requisite fees therefor in accordance with §1-23(d)(i)(cc) of subchapter 1-B of this title.

(2) The Commissioner may refuse to issue a photo identification card for the reasons set forth in subparagraphs b,

d and e of §22-259 of the Code, or may defer a decision whether to issue such card when there is an indictment or a criminal or civil action pending against or involving the applicant as provided in subparagraph (b)(ii) of such section.

(d) A person whose application for a photo identification card has been denied by the Commissioner for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code, shall be given notice of the reasons for such denial and may respond in writing to the Commissioner within ten days of mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-18

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-18 Terms and Fees.

(a) A registration issued pursuant to this subchapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(b) The fee for registration of a Wholesale business or Market business shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

(c) The fee for permanent photo identification cards issued by the Department shall be twenty dollars ($20), and the fee for the replacement of a photo identification card that has been lost or stolen shall be fifteen dollars ($15). A Wholesale Business or a Market business shall be responsible for the payment of any fee imposed by this section with respect to an employee of such business or any person seeking to become an employee of such business.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Subd. (c) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See Note

1 after T66 §1-16]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-19

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-19 Wholesale Business and Market Business Operations.

(a) (1) Wholesale businesses and Market businesses shall not transfer their registration numbers as part of the sale of such businesses.

(2) Wholesale businesses and Market businesses shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a Wholesale business or Market business seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a Wholesale business or Market business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a registration number to such sublessee. Absent such registration number no Wholesale business or Market business may permit a sublessee to operate a Wholesale business or Market business on such premises.

(b) **Furnishing and display of registration numbers.** The name and registration number of a Wholesale business and Market business shall be affixed and prominently displayed on all premises and vehicles from which such business is conducted.

(c) **Record keeping.** Wholesale businesses and Market businesses shall retain copies of all invoices and other documents reflecting deliveries or payments from or to suppliers and customers. Such books and records shall

accurately reflect the amount of goods or services involved in each transaction, and shall, along with all other records produced or received in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(d) **Workers' Compensation Insurance.** Wholesale businesses and Market businesses shall submit proof that they have obtained the required workers' compensation and disability benefits coverage, or that they are exempt from §57 of the Worker's Compensation Law, and §220(8) of the Disability Benefits Law. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 Application for Certificate of Workers' Compensation Insurance;

DB-120.1 Employer's Application for Certificate of Compliance with Disability Benefits Law;

S1-12 Affidavit certifying that compensation has been secured.

Proof that no coverage is required can be provided by submitting the following Workers' Compensation Board form:

C-105.21 Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.

(e) **Liability insurance.** Wholesale businesses and Market businesses shall procure and shall maintain throughout the term of the registration the following types of insurance against claims for injuries to persons or damage to property which may arise from or in connection with the business:

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the Wholesale business or Market business, whether or not owned by the business, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(iii) Employers' Liability Insurance with limits of one million dollars ($1,000,000) per accident.

(f) The policy or policies of insurance required by this rule shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules may result in revocation or suspension of registration. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance effecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) Wholesale businesses and Market businesses shall be jointly and severally liable for any violation of this subchapter by any of their employees or agents.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20 Revocation or Suspension of Registration or Photo Identification Cards.

(a) The Commissioner may revoke a temporary photo identification card, and after notice and hearing, revoke or suspend (1) the registration of a Wholesale business or Market business or (2) a photo identification card for any of the reasons set forth in §22-260 of the Code, or for violation of any rule promulgated pursuant to §22-266 of the Code, including without limitation §1-20.7 of this subchapter. Notice shall be provided in accordance with the provisions of §1-39 of subchapter 1-B of this title. Hearings shall be afforded in accordance with the provisions of §1-38 of subchapter 1-B of this title.

(b) Revocation or suspension of registration shall require the immediate surrender to the Market Manager of all photo identification cards issued to the principals, employees and/or agents of the registrant. If a registration has been suspended, violation of the provisions of this subdivision may result in immediate revocation of a suspended registration and/or the imposition of penalties as provided in §22-258 of the Code.

(c) Revocation or suspension of photo identification cards (including temporary photo identification cards) shall require the immediate surrender of such cards to the Market Manager.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.1

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.1 Emergency Suspension of Registration or Photo Identification Cards.

Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a Wholesale business or Market business or the presence of any person in the market creates an imminent danger to life or property, immediately suspend the registration of such business or the photo identification card of such person, as applicable, without a prior hearing, provided that, such suspension may be appealed to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing pursuant to the provisions of §1-38 of subchapter B of this title shall be provided on an expedited basis within a period not to exceed four business days, and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a Wholesale business or Market business whose registration has been suspended without a prior hearing, permit such business to remain in the market for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's judgment, such permission is consistent with the safety of the public and the market.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.2

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.2 Labor Union and Labor Organization Registration Required.

(a) Labor unions and labor organizations and officers of labor unions and labor organizations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a labor union or labor organization or officer of a labor union shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.3

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.3 Registration Procedure.

(a) A labor union or labor organization shall provide the information requested in the registration application form provided by the Department, which form shall be signed by an officer and certified under penalty of perjury, including (i) the information required by §22-264(a) of the Code, (ii) all criminal convictions, in any jurisdiction, of such labor union or labor organization, (iii) any criminal or civil investigation of such labor union or labor organization by a federal, state or local prosecutorial agency, investigative agency or regulatory agency in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, (iv) all civil or administrative proceedings to which such labor union or labor organization has been a party involving allegations of racketeering, including but not limited to offenses listed in subdivision nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organization statute (18 U.S.C. §1961 **et seq.**) or of an offense listed in subdivision one of §460.10 of the penal law, as such statutes may be amended from time to time, (v) all judicial or administrative consent decrees entered into by such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, and (vi) the appointment of an independent auditor or monitor or receiver or administrator or trustee over such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter. Notwithstanding the foregoing, no labor union or labor organization shall be required to furnish information pursuant to this subdivision which is already included in a report filed by the labor union or labor organization headed by such officer with the Secretary of Labor pursuant to 29 U.S.C. §431 **et seq.** or §1001 **et seq.** if a copy of such report, or of the portion thereof containing such information, is furnished to the Commissioner.

(b) An officer of a labor union or labor organization required to be registered with the Commissioner pursuant to §22-264(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officer under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision a or b of this section shall be reported to the Commissioner by such officer, in a signed and notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter 1-B of this title.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

Subd. (a) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See

Note 1 after T66 §1-16]

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.4

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.4 Wholesale Trade Association Registration Required.

(a) Wholesale trade associations and officers of wholesale trade associations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a wholesale trade association and officers of wholesale trade associations shall be three hundred ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.5

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.5 Registration Procedure.

(a) Wholesale trade associations shall provide the information requested in the registration application form provided by the Department, including the names of all members of such association and of all persons holding office in such association, together with such identifying information as the Commissioner shall request, which form shall be signed by an officer, and certified under penalty of perjury.

(b) Officers of wholesale trade associations required to be registered pursuant to §22-265(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officers, and certified under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision a or b of this section shall be reported to the Commissioner, in a notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any or all of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.6

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.6 Record Keeping.

(a) Wholesale trade associations shall retain copies of all invoices and records of payment to and from wholesalers and Market businesses, leases, sub-leases, union contracts, as well as all other records produced or maintained in the normal course of business for a period of three years.

(b) Such books and records shall be made available promptly for immediate inspection and/or copying upon request by the Market Manager or his or her designee.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

27 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-20.7

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.7 Prohibited Acts.

(a) No person shall (1) interfere, or attempt to interfere, with the Market Manager, his or her staff or the employees of the department of investigation in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the market; and (2) interfere, or attempt to interfere with, or otherwise obstruct any operations or property of any registrants in the market.

(b) In addition to the foregoing, the following rules also apply to principals, employees and agents of wholesalers, Market businesses, officers of labor unions and labor organizations, and officers of wholesale trade associations. Such persons shall not:

(1) authorize another person to use the name of the Wholesale business or Market business to which a registration number has been issued for such Market business;

(2) authorize another person to conduct a Wholesale business or Market business with the registration number that has been issued to such market business; (3) conduct a Wholesale business or Market business under any name other than the name under which such business has been registered with the Market Manager;

(4) violate applicable federal, state or city laws and regulations;

(5) in the case of a Wholesale business or Market business fail to notify the Market Manager and the Commissioner of any change in the information provided pursuant to §1-14 of this subchapter with respect to the composition or ownership of the Wholesale business or Market business, and any changes in personnel;

(6) associate with a person whom such person knows or should know is a member or associate of an organized crime group (a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group shall be presumed to be a member or associate of an organized crime group);

(7) make a false or misleading statement to the Department or the department of investigation, or make, file or submit a false statement to a government agency or employee;

(8) threaten or attempt to intimidate a customer or prospective customer;

(9) retaliate against a customer or prospective customer, or a principal, employee or agent of any Market business or wholesaler that has made a complaint to the Department, the department of investigation or the police department, or any other governmental entity;

(10) falsify any business record;

(11) in the case of a Wholesale business or Market business, continue to employ a person who has not received a valid photo identification card in accordance with the provisions of this subchapter, or whose photo identification card has been revoked, or whose photo identification card has been suspended during the period of suspension;

(12) utilize any motor vehicle in connection with the operation of such business which is not properly registered with the New York State Department of Motor Vehicles and insured in accordance with §1-19 of this subchapter;

(13) engage in any unfair labor practice under federal and state labor laws as applicable.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-20.8

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER A-1*2 PUBLIC WHOLESALE MARKETS

§1-20.8 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to a wholesaler, Market business, labor union or labor organization, or wholesale trade association, or any of their principals, employees, agents or officers for the violation of any provision of Chapter 1-B of Title 22 of the Code, this subchapter or of subchapter A of this chapter. Any person who violates any provision of this subchapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation, which may be recovered in a civil action, or in a proceeding before the Environmental Control Board.

(b) A wholesaler or a Market Business shall be jointly and severally liable for any violation of Chapter 1-B of Title 22 of the Code and of this subchapter committed by any of its officers, employees and/or agents acting within the scope of their employment.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997.

FOOTNOTES

2

[Footnote 2]: * Subchapter A-1 added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose: Section 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapter 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated to provide the Department and the Market Manager with the ability to implement and enforce those requirements.

Rules of the City of New York

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

66 RCNY 1-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-21 Scope.

This subchapter shall govern the licensing, registration and other requirements relating to: the unloading of seafood for delivery to wholesalers in the Fulton Fish Market distribution area; services related to the loading of seafood that has been delivered to purchasers by wholesalers in such market area; conduct of wholesale seafood businesses and the placement of seafood on the street by wholesalers for sale within such market area; the delivery of seafood from wholesalers in such market area by truck or other vehicle to retail establishments in the city of New York or other locations outside the market area; the conduct of other business and activities related to the distribution of seafood in the market area; and traffic, safety and sanitary conditions in the market area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-22 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Applicant. "Applicant" shall mean, if a business entity submitting a response to a request for licensing proposals, an application for a temporary license or a registration application, the entity itself and all the principals thereof; if an individual submitting an application for a photo identification card, such individual.

Business related to seafood distribution. "Business related to seafood distribution" shall mean any business located in the market area, other than an unloading, loading, wholesaler or seafood delivery business, that provides or maintains items or services necessary to seafood distribution, including, but not limited to, the provision or maintenance of ice or other equipment or supplies;

Business entity. "Business entity" shall mean a sole proprietorship, partnership, corporation, or other entity established under law and authorized to conduct business within the state of New York.

Commissioner. "Commissioner" shall mean the Commissioner of Business Services.

Department. "Department" shall mean the New York City Department of Business Services.

Designated waiting area. "Designated waiting area" shall mean that area set aside by the Market Manager during

regular unloading hours in which trucks shall wait until unloaders are assigned to them.

Fulton Fish Market distribution area. "Fulton Fish Market distribution area" or "Market Area" shall mean the area beginning at the point where the westerly street line of Water Street intersects the southerly street line of Maiden Lane; thence easterly along the southerly street line of Maiden Lane as extended to the East River U.S. Pierhead Line; thence northerly along the East River U.S. Pierhead Line to the northerly street line of Robert Wagner Sr. Place as extended; thence westerly along the northerly street line of Robert Wagner Sr. Place to the prolongation of the westerly street line of Pearl Street; thence southerly along the westerly street line of Pearl Street to the southerly street line of Fulton Street; thence easterly along the southerly street line of Fulton Street to the westerly street line of Water Street; thence southerly along the westerly street line of Water Street to the point of beginning.

Hearing officer. "Hearing officer" shall mean a person appointed or designated to conduct hearings pursuant to the procedures set forth in §1-38 of this subchapter relating to the suspension and revocation of a license or the suspension, revocation and refusal to renew a registration pursuant to §§22-209, 22-217 and 22-218 of the Administrative Code and the provisions of this subchapter.

Loader. "Loader" shall mean an individual who performs loading services.

Loading business. "Loading business" shall mean any business entity that, for a payment, provides loading services.

Loading services. "Loading services" shall mean services performed by a loader and provided by a loading business for a purchaser of seafood, including parking such purchaser's vehicle, moving such vehicle when necessary for traffic control, loading seafood onto such vehicle, and ensuring the security of such vehicle and the seafood loaded thereon; provided, however, that the term shall not mean the loading of seafood onto the vehicle of a purchaser when such loading is performed by an employee of a wholesaler delivering seafood from such wholesaler to the vehicle of the purchaser thereof or by a purchaser or an employee of such purchaser.

License. "License" shall mean an unloading business license or a loading business license issued by the commissioner authorizing the conduct of such business in the market area.

Market hours. "Market hours" shall mean the hours of operation of the market area as designated by the Market Manager for purposes of the requirement in §22-203 of the Administrative Code that persons required to possess photo identification cards must display such cards while in the market area. Such hours shall be posted in appropriate locations throughout the market area.

Market manager. "Market manager" shall mean a person designated by the Commissioner to supervise operations in the market area. Such supervision shall include, without limitation: implementation of these rules and the authority to enforce violations of any provision of Chapter 1-A of Title 22 of the Administrative Code or these rules; supervision of Department staff employed in the market area; response to complaints relating to the operation of businesses in the market area; examination of documents required to be maintained by a licensee or registrant pursuant to this chapter; referrals, where appropriate, to any law enforcement, adjudicatory, investigative or prosecutorial agency of matters occurring within the market area; and such other functions and duties as the commissioner may assign consistent with the provisions of this subchapter.

Principal. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer, director and stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; of another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders

holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this subchapter (i) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (a) such individual, (b) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (c) the children, grandchildren and parents of such individual, (d) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (e) a corporation in which any of such individual, the spouse, children, grandchildren and parents of such individual own fifty percent or more in value of the stock; (ii) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (iii) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Registration. "Registration" shall mean wholesaler registration or seafood deliverer registration as required pursuant to §22-209 of the Administrative Code and §1-31 of this subchapter.

Regular loading hours. "Regular loading hours" shall mean the hours designated by the Market Manager for the loading of seafood. Notice of such designation and of any changes thereto shall be posted in appropriate locations.

Regular unloading hours. "Regular unloading hours" shall mean the hours designated by the Market Manager for the unloading of seafood from trucks. Notice of such designation and of any changes thereto shall be posted in appropriate locations.

Seafood. "Seafood" shall mean fish, seafood or consumables derived therefrom.

Seafood delivery business. "Seafood delivery business" or "seafood deliverer" shall mean any business entity, that, for payment, delivers seafood from wholesalers in the market area by truck or other vehicle to retail establishments or other wholesalers in the city of New York or other locations outside the market area.

Stand permit. "Stand permit" shall mean an occupancy permit granted by the commissioner subject to such conditions as the commissioner shall prescribe authorizing use of city property by a wholesaler for the placement of seafood in an area extending into a city street.

Unloader. "Unloader" shall mean an individual who performs unloading services.

Unloading area. "Unloading area" shall mean a location, approved or designated by the Market Manager, in which seafood may be unloaded from trucks for delivery to wholesalers or for transfer and distribution to other locations. Notice of such designations and of any changes thereto shall be posted in appropriate locations.

Unloading business. "Unloading business" shall mean any business entity that, for a payment, provides unloading services.

Unloading Dispatcher. "Unloading Dispatcher" shall mean any person designated by the Market Manager to supervise the unloading procedure.

Unloading services. "Unloading services" shall mean the unloading of seafood from a truck or other vehicle that has transported such seafood from suppliers and the delivery thereof to wholesalers or the transfer thereof to other trucks or vehicles for transport to other locations.

Wholesaler. "Wholesaler" or "wholesale seafood business" shall mean any business entity which sells or offers to sell seafood for resale to the public, whether or not such business entity also sells or offers to sell seafood directly to the public; except that "wholesaler" shall not include any such entity that is primarily engaged in the sale of seafood that has been processed and packaged by another business for sale to consumers in such packaged form.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-23

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-23 Photo Identification Cards.

(a) **Identification Cards Required.** (1) No person who is an officer, principal, employee or agent of any unloader, loader, wholesaler, seafood deliverer, or other business related to the distribution of seafood in the Market Area who performs any function in the Market Area directly related to the distribution of seafood shall perform such function without a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-203 of the Administrative Code; except that no enforcement of this provision shall take place against a person who has been working in such a capacity in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until, with respect to a person required to possess a Class A photo identification card, (a) such person has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code or (b) the application of such person for a photo identification card has been denied by the Commissioner; and except that, with respect to such a person required to possess a Class B photo identification card, no enforcement shall take for fifteen days following the effective date of this subchapter, provided that, with respect to such a person whom the Commissioner has required to submit to fingerprinting and disclosure requirements, no enforcement shall take place unless and until (a) such person has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code or (b) the application of such person for a photo identification card has been denied.

(2) Such identification card shall be displayed so as to be readily visible to others at all times during market hours.

(3) The Market Manager may, where appropriate, issue a provisional identification card to an employee who has submitted the information and fee required by this subchapter. Such provisional identification card shall be valid until the Commissioner has either issued or denied a permanent identification card, unless such provisional card has been revoked or suspended prior thereto in accordance with the procedures set forth in this subchapter. The Market Manager may also, in his or her discretion, make provision for temporary photo identification cards, which shall be valid for a period not to exceed six weeks, to be issued to persons employed by unloaders, wholesalers, loaders, seafood deliverers, or other businesses related to seafood distribution on a seasonal or otherwise temporary basis, subject to the provisions of this section. The Market Manager may also provide for a business to arrange to prequalify for photo identification cards potential employees whom the business may hire on a seasonal or other temporary basis.

(4) The fee for a photo identification card shall be twenty dollars ($20) and for the replacement of a photo identification card that has been lost or stolen shall be fifteen dollars ($15).

(b) **Class A Photo Identification Cards.** A person who performs any function in the Market Area directly related to the handling and transportation of seafood within or from the Market Area and who is a principal, employee or agent of an unloader or a loader subject to the licensing requirement of Chapter 1-A of Title 22 of the Administrative Code must obtain a Class A photo identification card issued by the Commissioner from the Market Manager. Issuance of Class A photo identification cards shall be subject to the provisions of §22-216 of such code.

(1) The photo identification card of a principal, employee or agent of an unloader shall contain such information as the Commissioner deems appropriate, including the name of such person, the number of the license issued to such business under §22-204 of the Administrative Code and §1-27 of these rules and shall specify the position held by such person in the business.

(2) The photo identification card of an employee or agent of a loading business shall contain such information as the Commissioner deems appropriate the name of such person, the number of the license issued to such business under §22-206 of the Administrative Code and §1-27 of this subchapter and shall indicate the designated or approved locations in which the person may work and whether he or she is a supervisor or staff employee of the loading business.

(d) **Suspension, Revocation and Refusal to Issue Class A Photo Identification Card.** (1) In order to apply for a photo identification card pursuant to this section, the applicant shall first: (aa) be fingerprinted; (bb) provide in full the background information required pursuant to subdivision (a) of §22-216 of the Administrative Code in both parts of the form attached as Appendix A of this subchapter; and (cc) shall pay a fee of sixty dollars ($60) for such fingerprinting and a fee of one hundred and fifty dollars ($150) for investigation of such background information.

(2) The Commissioner may refuse to issue a Class A photo identification card for the reasons set forth in subdivision (b) of §22-216 of the Administrative Code or may defer the decision whether to issue such card for reasons of a pending indictment or criminal or civil action as provided in paragraph (2) of such subdivision. When a Class A photo identification card is denied for lack of good character, honesty and integrity, or when the decision to issue such card is deferred, the applicant shall be given notice of the reasons for such denial or decision to defer and may respond in writing to the Commissioner within five days of receipt of such notice. The Commissioner shall review such response and make a final determination whether to issue a Class A photo identification card to the applicant.

(3) The Commissioner may, after notice and the opportunity for a hearing, revoke or suspend a Class A photo identification card pursuant to the provisions of §22-217 and §22-218 of the Administrative Code.

(e) **Class B photo identification cards.** A person who will perform any function directly related to the distribution of seafood in the Market Area and who is a principal, employee or agent of a wholesaler, seafood deliverer or other business conducting activities related to the distribution of seafood in the Market Area must obtain a Class B photo identification card from the Market Manager.

(1) The photo identification card of a principal of a wholesaler and of the employees and agents of such wholesaler

shall contain such information as the Commissioner deems appropriate, including the name of the person, the registration number issued to such wholesaler pursuant to §22-209 of the Administrative Code and §1-32 of this subchapter, the location in the Market Area of such wholesale seafood business and whether the person is an owner, employee or agent of the wholesale seafood business.

(2) The photo identification card of a principal, employee or agent of a seafood deliverer or other business related to seafood distribution shall contain such information as the Commissioner deems appropriate, including the name of the person, the registration number of such business where registration of such business is required pursuant to the provisions of Chapter 1-A of Title 22 of the Administrative Code, the name of such business, and the location in the Market Area where such business is normally conducted.

(3) The photo identification card of a person who is a principal, employee or agent of more than one wholesale seafood business or seafood delivery business shall reflect the multiple affiliations of such person.

(f) **Refusal to Issue Class B Photo Identification Card or Deferral of Decision to Issue Class B Photo Identification Card.** Notwithstanding any provision of this subchapter:

(1) the Commissioner may, for the reasons set forth in paragraph (ii) of subdivision (b) of §22-203 of the Administrative Code, require that an applicant for a Class B photo identification card shall, within ten days: (aa) be fingerprinted, (bb) provide the background information required by §22-216 of the Administrative Code as set forth in both parts of the form constituting Appendix A of this subchapter, and (cc) pay a fee of sixty dollars ($60) for such fingerprinting and a fee of one hundred and fifty dollars ($150) for such background investigation;

(2) Where the provisions of paragraph (i) of this subdivision apply, the Commissioner may refuse to issue a Class B photo identification card for any of the reasons set forth in subdivision b of §22-216 of the Administrative Code or may defer the decision whether to issue such card for reasons of a pending indictment, or civil or criminal action as provided in paragraph (ii) of such subdivision. When a Class B photo identification card is denied for lack of good character, honesty or integrity or when the decision whether to issue such card is deferred, the applicant shall be given notice of the reasons for such denial and may respond in writing within five days of receipt of such denial or decision to defer. The Commissioner shall review such response and make a final determination whether to issue the Class B photo identification card.

(g) **Suspension and Revocation of Class B Photo Identification Card.** (1) The Commissioner may, after notice and the opportunity for a hearing, suspend or revoke a Class B photo identification card for any of the actions set forth in subdivision (c) of §22-217 of the Administrative Code or the reasons set forth in §22-218 of such Code.

(2) In addition to the reasons set forth in paragraph (i) of this subdivision, if, at any time subsequent to the issuance of a Class B photo identification card, the Commissioner has reasonable cause to believe that a person who possesses such card lacks good character, honesty and integrity, the Commissioner may require that such person be fingerprinted, provide the additional background information required by subdivision (a) of §22-216 of the Administrative Code as set forth in Part II of the form constituting Appendix B of this subchapter and pay the fees prescribed therefor in paragraph (1) of subdivision (d) of this section. The Commissioner may, after notice and the opportunity for a hearing, revoke the photo identification card of such person for the reasons set forth in subdivision (b) of §22-216 of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

CASE AND ADMINISTRATIVE NOTES

¶ 1. For the respondent's interference with the orderly function of the Fulton Fish Market, by initiating a fight

during which the respondent struck one market inspector and injured a second who came to the aid of the first, the respondent's class B photo ID was suspended for 180 calendar days pursuant to paragraph (g) of this section. Department of Business Services v. Fiore, OATH Index No. 722/97 (Apr. 22, 1997), aff'd, _____ AD2d _____, 667 NYS2d 244 (1st Dept. 1998).

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-24

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-24 Unloading and Loading Licenses Required.

(a) **Unloading Licenses.** No person shall operate an unloading business in the Market Area without a license to conduct such business issued by the Commissioner pursuant to this subchapter on and after the date that unloading licenses have been issued pursuant to this subchapter, except that no enforcement of this provision shall take place against a person who has been operating an unloading business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until (aa) the principals of such business have failed to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code within the time period prescribed by the Commissioner, (bb) such business has failed to respond to a request for unloading licensing proposals by the date specified by the Commissioner and in the form and containing the information required by the Commissioner, or (cc) such license has been denied by the Commissioner.

(b) **Loading Licenses.** No person shall operate a loading business in the Market Area without a license to conduct such business issued by the Commissioner pursuant to this subchapter on and after the date that loading licenses have been issued pursuant to this subchapter, except that no enforcement of this provision shall take place against a person who has been operating a loading business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 unless and until (aa) the principals of such business have failed to submit to fingerprinting or to submit the information required pursuant to §22-216 of the Administrative Code within the time period prescribed by the Commissioner, (bb) such business has failed to respond to a request for loading licensing proposals by the date specified by the Commissioner and in the form and containing the information required by the Commissioner, or (cc)

such license has been denied by the Commissioner.

(c) **Penalties for Unlicensed Activity.** Any person who violates the provisions of this section shall, upon conviction thereof, be subject to criminal and civil penalties as provided in subdivision (b) of §22-215 of the Administrative Code and subdivision (bb) of §1-36 of this subchapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-25

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-25 Application for License.

(a) **Procedure.** (1) A person operating or wishing to operate an unloading business or a loading business in the Market Area shall submit an application for a license and a response to a request for licensing proposal issued by the Commissioner pursuant to §22-204 or §22-206 of the Administrative Code no later than the dates specified in such request for proposal.

(2) Notice of the availability of requests for licensing proposals to conduct an unloading business or a loading business in the Market Area, and the date or dates by which such proposals must be submitted, shall be posted in locations within the Market Area and published in **The City Record** and any other locations and publications as the Commissioner may determine are appropriate.

(b) **License Fee.** The fee for a license shall be one thousand dollars ($1000) and the fee for extension of such license for an additional year shall be five hundred dollars ($500). The fee for a temporary license shall be prorated to a two-year term.

(c) **Term of License.** Each license shall be valid for two years and may be extended for an additional year at the discretion of the Commissioner. A temporary license shall be valid for a period not to exceed one year, provided that such license shall not extend beyond the term of the original license.

(d) **License Non-Transferable; Notification Requirements for Addition of Principal.** (1) A license shall not be transferable.

(2) A licensee shall provide the Commissioner with advance notice of at least ten (10) business days of the proposed addition of a new principal to the business of the licensee. Such notification shall include a complete response to the applicable disclosure form required of applicants for licenses by the Commissioner pursuant to subdivision (a) of §22-216 of the Administrative Code, as attached as Appendix B of this subchapter, payment of the fee for the investigation of the information submitted therein, and the fingerprinting of the new principal in the manner set forth in subdivision (a) of §22-216 of the Administrative Code. The Commissioner may waive or shorten such period upon a showing that there exists a bona fide business requirement therefor.

(3) Except where the Commissioner determines within such 10 day period, based on information available to him or her, that the addition of such new principal may have a result inimical to the purposes of Chapter 1-A of Title 22 of the Administrative Code, the licensee may add such new principal pending the completion of review under §22-216 of the Administrative Code. In the event of such determination, the licensee shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of review under §22-216 of the Administrative Code would not have a result inimical to the purposes of Chapter 1-A of Title 22 of the Administrative Code. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the license shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(e) **Fingerprinting.** All applicants submitting responses to requests for licensing proposals shall be fingerprinted. The fee for the processing of fingerprints shall be sixty ($60) dollars per set.

(f) **Information Required on Application.** The application accompanying the response to the request for licensing proposal shall include, but not be limited to the following information:

(1) The name and address of the applicant submitting such response and the social security numbers of the principals of the applicant business.

(i) If such applicant is a corporation, a copy of the certificate of incorporation and the names and addresses of all officers and directors.

(ii) If such applicant is a partnership, a copy of partnership papers, certified by the County Clerk.

(A) If the applicant is doing business under an assumed name, a Certificate of Assumed Name, certified by the County Clerk.

(B) Complete responses by the applicant business and by all of the principals of the business to the applicable disclosure form required by the Commissioner pursuant to subdivision (a) of §22-216 of the Administrative Code as attached as Appendix B of this subchapter. The fee for the investigation of the information submitted therein shall be three hundred dollars ($300).

(2) The names and addresses and dates of birth of all employees and/or agents of the applicant who will perform work directly or indirectly related to loading or unloading, as the case may be, whether inside or outside the Market Area; drivers' license numbers, with the class and expiration date, or other required operators' licenses, of all employees and/or agents who will operate vehicles within the Market Area; and completed disclosure forms, as required pursuant to §22-216 of the Administrative Code and set forth as the form constituting Appendix A of this subchapter, for each current or identified employee and/or agent who will be required to possess a Class A photo identification card.

(3) A business telephone number and a business address within the City of New York where notices may be

delivered and legal process may be served, and where records required by these rules shall be maintained, and the name of a person of suitable age and discretion who shall be designated as agent for the service of legal process.

(4) A tax identification number.

(5) A statement of financial responsibility in the form prescribed by the Commissioner demonstrating the capacity to conduct the business for which the license is sought and setting forth the amounts and sources of funds used or intended to be used in the operation of the business. Proof of such financial capacity shall include, at a minimum, a demonstration of the current financial ability to pay all monthly expenses relating to required equipment, insurance, personnel, and other items for a period of at least three months.

(g) **Proof of Insurance Required.** Before a license is issued, an applicant shall submit proof that the following insurance policies have been secured: (1) The required workers' compensation and disability benefits coverage, or that the applicant is exempt from the Worker's Compensation Law, §57, and the Disability Benefits Law, §220, subdivision (8). Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 **Application for Certificate of Workers' Compensation Insurance;**

DB-120.1 **Employer's Application for Certificate of Compliance with Disability Benefits Law;**

S1-12 **Affidavit certifying that compensation has been secured.**

Proof that no coverage is required can be provided by submitting the following Worker's Compensation Board form:

C-105.21 **Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.**

(2) Liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the licensee's business pursuant to the license. The licensee may purchase such policies in connection with one or more other licensees, provided that the coverages described in this subdivision are maintained.

(i) Commercial General Liability Insurance with liability limits of, for unloading businesses no less than one million dollars ($1,000,000.00) and for loading businesses no less than five hundred thousand dollars ($500,000) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(A) Business Automobile Liability Insurance covering every vehicle operated by the licensee in his or her business, whether or not owned by the applicant, and every vehicle hired by the licensee with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(B) Employers' Liability Insurance with limits of one million dollars per accident.

(3) A performance bond or other security, if the Commissioner in his or her discretion so requires, in an amount, if any, determined by the Commissioner that will secure the City for the provision of unloading services or loading services, as the case may be, in the event of a default of a licensee as provided by §22-204 or §22-206 of the Administrative Code.

The policy or policies of insurance required by these rules shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required by the Commissioner as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules will result in automatic cancellation of the license. Such policy or

policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance affecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the license.

(h) **Requirements for Proposals.** Responses to requests for proposals shall be in the form prescribed by the Commissioner and shall contain the proposal information concerning the services to be performed and the conduct of the business described in subdivision (b) of §22-204 of the Administrative Code with respect to unloading licenses and in subdivision (b) of §22-206 of such Code with respect to loading licenses. The proposal shall be signed by all the principals of the applicant and certified under penalty of perjury.

(i) **Examination of Records.** The Commissioner may require an applicant to produce for inspection such business records as the Commissioner deems necessary to verify the truth and accuracy of information submitted pursuant to subdivision (f) of this section.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-26

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-26 License Conditions.

A license to conduct an unloading business in the Market Area shall be subject to conditions specifying rates, insurance and bonding, performance standards and customer service, and any other requirements as may be set forth as conditions of such license pursuant to subdivision (d) of §22-204 of the Administrative Code. A license to conduct a loading business shall be subject to conditions specifying rates, insurance and bonding, performance standards and customer service, and any other requirements set forth as conditions of such license pursuant to subdivision (d) of §22-206 of the Administrative Code. In addition, a license to conduct an unloading business and a license to conduct a loading business shall be subject to the following conditions.

(a) **Maintenance of Insurance.** A licensee shall demonstrate that he, she or it has secured the insurance coverage required pursuant to §1-25 of this subchapter, and shall maintain such required insurance coverage throughout the term of the license.

(b) **Notification of Material Change in Information.** (1) The licensee must notify the Market Manager, within ten calendar days, of any material changes in the information submitted pursuant to subdivision (f) of §1-25 of this subchapter, as identified on the form constituting Appendix B to this subchapter, as such Appendix may be amended from time to time in accordance with applicable requirements. Such notification shall be notarized and shall be signed by the licensee if an individual, or, if the licensee is a corporation, by an officer of the corporation, or if the licensee is a partnership, by a partner.

(2) **A license shall not be altered by a licensee.** Any license that is altered by the licensee shall be null and void.

(c) **Notification of Arrest or Conviction.** A licensee must notify the Commissioner of the arrest or criminal conviction of any principal of the licensee, or of the arrest or criminal conviction of any employee and/or agent of the licensee of which the licensee had knowledge or should have known.

(d) **Liability for Violations.** A licensee shall be liable for violation of the provisions of this subchapter by his, her or its employees or agents.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-27

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-27 License Issuance.

(a) Following review of proposals submitted in response to a request for licensing proposals issued pursuant to §22-204 or §22-206 of the Administrative Code, as the case may be, the Commissioner may, at his or her discretion, issue one or more licenses to conduct an unloading business or a loading business in the Market Area to the business entity or entities the Commissioner has determined are most qualified to provide such services in a safe, orderly and cost-efficient manner.

(b) The Commissioner may refuse to consider a proposal from or to issue a license pursuant to the provisions set forth in subdivision (b) of §22-216 of the Administrative Code or may defer a decision on whether to consider such proposal or issue such license when there is a pending indictment or a criminal or civil action as provided in paragraph (ii) of such subdivision.

(c) When a license or consideration of a proposal is denied for lack of good character, honesty and integrity or when the decision to issue such license or to consider such proposal is deferred, the applicant shall be given notice of the reasons for such denial or deferral and may respond in writing within five days of receipt of such notice. The Commissioner shall review such response and shall make a final determination whether to issue the license or consider the proposal.

(d) Notwithstanding any other provision of this section, the Commissioner may, for the reasons set forth in the

Administrative Code, determine not to issue a license or licenses to conduct unloading or loading businesses in the Market Area, as the case may be, and instead arrange for the Department, a designee of the Department or an entity under contract to the Department to provide such services.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-28

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-28 Revocation or Suspension of a License.

(a) The Commissioner may, after due notice, which shall be served by first class mail addressed to the business address of the unloader or the loader, and the opportunity for a hearing, in addition to any other penalties provided in this chapter, suspend or revoke a license upon the occurrence of any one or more of the following conditions:

(1) A licensee and/or any of the principals, employees and/or agents of the business has been found to be in violation of any provision of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter.

(2) A licensee and/or any of the principals, employees or agents has repeatedly failed to obey the orders of the Market Manager or of his or her staff.

(3) A licensee has failed to pay any fines imposed pursuant to Chapter 1-A of Title 22 of the Administrative Code or this subchapter.

(4) A licensee has been found in violation of any laws prohibiting deceptive, unfair, or unconscionable trade practices, or has been found in persistent or substantial violation of any City, State or Federal law, rule or regulation regarding the handling of seafood. For purposes of this provision:

(i) "persistent" shall mean three or more violations within a six month period; and

(ii) "substantial violation" shall mean a violation which has a bearing on the continued fitness of a licensee to operate a business in the market area.

(5) A licensee or any of the principals of such business has been convicted of a crime which, under Article Twenty-three-a of the Correction Law, would provide a basis for the Market Manager to suspend or revoke, such license.

(6) Whenever the Commissioner determines, after consideration of the factors set forth in subdivision b of §22-216 of the Administrative Code, that the licensee or any of its principals lacks good character, honesty, or integrity.

(7) Whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the license was based.

(8) Whenever the licensee has failed to notify the Market Manager as required by subdivision (b) of §1-26 of this subchapter and the conditions of its license of a material change in the information on the application for such license or of the arrest or criminal conviction of the licensee or of any of its principals, or of the arrest or criminal conviction of any of its employees and/or agents of which the licensee had knowledge or should have known.

(b) An order of suspension pursuant to this section shall state the period of time such suspension shall remain in effect; such period shall be reasonable in relationship to the violation(s) underlying the suspension.

(c) Notwithstanding any other provision of this subchapter, the Market Manager may, if he or she determines that the operation of an unloading or a loading business creates an imminent danger to life or property, immediately suspend a license without a prior hearing, provided that the licensee may immediately appeal such suspension to a Deputy Commissioner of the Department. In the event that the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed four business days and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing.

(d) Suspension or revocation of a license shall require the immediate surrender of the license and all photo identification cards issued for principals, employees and/or agents of the licensee. Violation of the provisions of this subdivision may result in revocation of the suspended license or the imposition of civil or criminal penalties as provided in subdivision b of §22-215 of the Administrative Code, or both.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in

the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-29

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-29 Unloading Operations.

An unloading business shall comply with the conditions for conducting unloading operations that are contained in the license issued to such unloading business pursuant to §22-204 of the Administrative Code. In addition, an unloading business shall be subject to the provisions of this section.

(a) **Order of Unloading.** (1) Upon arrival, trucks shall be directed to the designated waiting area. The unloading dispatcher designated by the market manager shall record relevant information, including the license number and time of arrival and shall inspect and make a copy of the manifest for seafood to be delivered by each truck that enters a designated waiting area.

(2) Trucks shall remain in the designated waiting area until directed by the unloading dispatcher to proceed to a designated unloading area.

(3) Except as otherwise provided in paragraph four of this subdivision, unloaders shall unload trucks in order of their arrival at the designated waiting area, based on the time of arrival recorded by the unloading dispatcher.

(4) Notwithstanding paragraph three of this subdivision, the unloading dispatcher may permit the unloader to unload out of order of arrival if the truck is delivering fewer than three pallets of seafood; if the truck contains live seafood; if the seafood requires special handling or equipment which only a particular unloader can provide; or for other

reasons which the unloading dispatcher determines justify expedited unloading.

(b) **Unloading Assignments and Hours.** (1) An unloading business shall not conduct unloading in an area unless the Market Manager has approved the use of such area by such unloading business or has assigned such unloading business to such area. The Market Manager may rotate such assignments. The Market Manager may also designate an unloading area or areas on property owned or controlled by the city in which all unloading of seafood for the Market Area shall take place, and the Commissioner may require payment of a fee for the use by unloading businesses of such area or areas. A business entity that conducts an unloading business on private property shall demonstrate to the Market Manager that he or she possesses a deed, lease or other permission allowing the right to use such property during regular unloading hours.

(2) (i) Except as provided in subparagraph (b) of this paragraph, an unloading business licensed pursuant to this subchapter shall be available throughout the regular unloading hours to unload trucks directed to such business by the unloading dispatcher.

(ii) If, toward the end of the regular unloading hours, the Market Manager determines that the presence of an unloading business is not required because of the small number of trucks awaiting unloading or expected to unload, he or she may allow such unloading business to leave. Where more than one unloading business is operating pursuant to an unloading license issued by the Commissioner, the Market Manager shall arrange for the rotation of such businesses required to remain present during such periods.

(iii) The Market Manager shall provide that an unloading business be on call to unload any truck that may arrive after the regular unloading hours and shall designate such unloading business. Where more than one unloading business is operating pursuant to an unloading license issued by the Commissioner, the Market Manager shall rotate the responsibility to unload trucks after regular unloading hours on a periodic basis. Each unloading business shall provide for an unloading crew and a supervisor of such unloading crew to be on duty during the hours that such business is on call. Such unloader may, where authorized in the conditions of his or her unloading license, charge a surcharge not to exceed the amount specified in such conditions for unloading after the regular unloading hours. Such surcharge shall be posted with the unloading rates as required in subdivision c of this section.

(3) An unloading business and an unloader shall at all times unload trucks in the order directed by the unloading dispatcher.

(4) An unloading business and an unloader shall not refuse to unload any truck directed to his, her or its approved or assigned unloading area by the unloading dispatcher.

(c) **Rates, Billing Procedures and Record Keeping.** (1) An unloading business may charge no more than those rates for unloading that are specified in the conditions of the unloading license issued pursuant to §22-204 of the Administrative Code and the provisions of this subchapter, and shall post such rates in such appropriate locations within the Market Area as the Market Manager shall specify.

(2) An unloading business shall direct the unloader to verify that the information on the bill of lading conforms to the seafood he or she delivers to the wholesaler, and to sign and legibly record the license number of the unloading business on the bill of lading and obtain a signature thereon from the wholesaler or a person authorized by the wholesaler to sign for such delivery acknowledging receipt of the seafood indicated thereon, noting any discrepancies.

(3) Except as otherwise authorized in writing by the Market Manager, an unloading business shall provide for the weekly billing of wholesalers for seafood delivered, shall retain copies of all such bills and of all other records produced in the normal course of business for thirty-six months and shall make all such records available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager. Each bill shall specify for each delivery the shipper, the date and time of delivery to the wholesaler, the quantity and type of seafood delivered and amount charged for the delivery.

(4) The provisions of this subdivision shall not apply where the Department, a designee of the Department or an entity under contract to the Department performs unloading services pursuant to paragraph (ii) of subdivision (g) of §22-204 or §22-208 of the Administrative Code.

(d) **Prohibited Acts.** (1) An unloading business or an unloader shall not engage in any other business or perform any other service in the Market Area that would interfere with the ability of the unloading business adequately and effectively to perform unloading activities under this subchapter.

(2) An unloading business or an unloader shall not interfere with the Market Manager or his or her staff in the discharge of his or her functions or interfere with or obstruct the orderly functioning of the unloading process by threats, intimidation or coercion, or by unloading any truck out of order or soliciting any other unloading business or unloader to unload any truck out of order, or by refusing to unload or soliciting any other unloading business or unloader to refuse to unload any truck directed to him, her or it by the unloading dispatcher.

(3) An unloading business or an unloader shall not charge any fees in addition to the fees for unloading specified in the conditions of the unloading license issued by the Commissioner, nor shall an unloading business or an unloader request or accept other fees or gratuities relating to unloading from wholesalers or truckers.

(4) An unloading business or an unloader shall not violate applicable Federal, State and City regulations regarding the handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-30

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-30 Loading Operations.

A loader shall comply with the conditions for conducting a loading business that are contained in the license issued to such loading business pursuant to §22-206 of the Administrative Code. In addition, a loading business shall be conducted subject to the provisions of this section.

(a) **Loading Charges and Vouchers.** (1) A loading business shall post copies of the schedule of the rates set forth in the conditions of his, her or its license to be charged for the parking of vehicles and for the services performed by such loading business in appropriate areas within the market area as determined by the market manager. The market manager may issue vouchers for sale to persons who wish to park and use loading services in the market area. Where the market manager has issued such vouchers, persons parking and using loading services in the market area shall pay loaders for such parking and loading services only with vouchers purchased from the market manager.

(2) A loading business or a loader shall not charge more than the rates that are contained in the conditions of the loading license and are shown on a schedule posted pursuant to paragraph (1) of this subdivision. Where the market manager has issued vouchers pursuant to this subdivision, loaders shall accept payment for parking and loading services only in voucher form and shall not charge, request or accept any cash payment or other fees or gratuities in connection with loading. Where such vouchers have been issued, the market manager shall redeem those vouchers presented to him or her by a loading business for payment.

(b) **Loading Assignments and Hours.** (1) A loading business shall provide loading services only in locations designated or approved by the Market Manager for such purpose.

(2) A loading business that is conducted on private property shall demonstrate to the Market Manager that such business possesses a deed to such property or a lease or other permission to use such property during regular loading hours. A lease or an occupancy permit from the Commissioner is required for the use of City property for a loading business.

(3) All loading and services related to loading shall take place during the regular loading hours designated by the Market Manager.

(c) **Prohibited acts.** (1) Where the market manager has issued vouchers pursuant to subdivision (a) of this section, a loading business or a loader shall accept payment for parking and loading services only in voucher form. A loading business or a loader shall not charge other than the fees contained in the conditions of the loading license and shown in the schedule of rates posted pursuant to subdivision (a) of this section nor shall a loading business or a loader solicit or accept gratuities from purchasers of seafood or fees other than for the services specified on such schedule.

(2) A loading business or a loader shall not attempt to force any person to park his or her vehicle in the location designated or approved by the Market Manager for the use of such loading business.

(3) A loading business or a loader shall not refuse to perform loading or services related to loading for any person when space is available for such person's vehicle in the location designated or approved by the Market Manager for the use of the loading business.

(4) A loading business or a loader shall not, by threats, intimidation or any other action, force any person to agree to use the services of such business or prevent any person from using the services of any other loading business. A loading business or a loader shall not solicit, threaten, or enter into agreement with another loader to refuse loading services to any person.

(5) A loading business or a loader shall not move or otherwise interfere with any vehicle, except that a loader may move a vehicle for the purposes of facilitating traffic flow or loading operations when the owner of such vehicle has entrusted the loader with the keys to the vehicle.

(6) A loading business or a loader shall not violate applicable federal, state or city regulations regarding the proper handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on

June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-31

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-31 Wholesaler and Seafood Deliverer Registration Required.

(a) As of fifteen days following the effective date of this subchapter, no wholesaler or seafood deliverer shall operate a wholesale seafood business, place seafood on the street, or operate a seafood delivery business in the Market Area unless such business has been registered with the Commissioner and received a registration number and a stand permit where such permit is required. A registration and stand permit issued pursuant to this chapter shall be valid for two years, and may be renewed for two year periods thereafter.

(b) Notwithstanding subdivision (a) of this section, a wholesaler or seafood deliverer who has been operating a wholesale seafood business or a seafood delivery business in the Market Area as of the effective date of Local Law No. 50 for the Year 1995 and who has been required by the Commissioner to submit to fingerprinting and to submit background information pursuant to §22-209 of the Administrative Code may continue to operate such wholesale or seafood delivery business beyond fifteen days following the effective date of this subchapter unless and until (aa) such wholesaler or seafood deliverer has failed, within the time period prescribed by the Commissioner, to submit to fingerprinting or to submit the required information or (bb) the Commissioner has denied the application for registration of such business. For the purposes of this subdivision, the terms "wholesaler" and "seafood deliverer" shall mean the wholesale seafood or seafood delivery business entity, as the case may be, and all the principals thereof.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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Rules of the City of New York

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

66 RCNY 1-32

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-32 Issuance and Revocation of Registration Numbers and Stand Permits.

(a) A person wishing to operate a wholesale seafood business or a seafood delivery business shall register such business and receive a registration number from the Market Manager. A wholesaler wishing to place seafood on the street in the Market Area shall indicate how much space on the street is required, at the time that such wholesaler registers with the Commissioner, and the Commissioner shall grant a stand permit or permits to such wholesaler on the basis of the physical availability of street space and upon the payment of a fee as provided in subdivision c of this section. Where the street space to be occupied by a wholesaler under a stand permit is described under the terms of a lease for adjacent premises and a payment is provided for under the terms of such agreement, the Commissioner shall issue a stand permit consistent therewith without requiring payment of an additional fee.

(b) A person wishing to register a wholesale business or a seafood delivery business shall provide the information required by Part I of the form constituting Appendix B of this subchapter, which form shall be signed by all the principals of such business and certified under penalty of perjury.

(c) The fee for registration of a wholesale business or a seafood delivery business shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250). The charge for a stand permit shall be based on the square footage of the area encompassed by the stand permit.

(d) A wholesaler and a seafood deliverer shall notify the Commissioner within ten calendar days of any changes in

the information indicated to be material information supplied on the registration form submitted pursuant to subdivision (b) of this section and shall be responsible for notifying the Commissioner of any such change throughout the term of the registration.

(e) Notwithstanding any provision of this subchapter: (1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that a wholesaler or a seafood deliverer in the Market Area or an employee or an agent of such wholesaler or seafood deliverer lacks good character, honesty and integrity, require that such wholesaler or seafood deliverer:

(i) be fingerprinted;

(ii) provide to the Commissioner the information set forth in subdivision (a) of §22-216 of the Administrative Code as required in the Part II of the form attached as Appendix B of this subchapter; and

(iii) pay the fees set forth in §1-25 of this subchapter for such fingerprinting and background investigation.

(2) The Commissioner may refuse to register such wholesaler or seafood deliverer for the reasons set forth in subdivision (c) of §22-216 of the Administrative Code or may defer a decision whether to register such wholesaler or seafood deliverer when there is an indictment or a criminal or civil action as provided in paragraph (ii) of such subdivision. A wholesaler or seafood deliverer denied registration for lack of good character, honesty and integrity, or whose registration has been deferred, shall be given notice of the reasons for such denial or deferral and may respond in writing to the Commissioner within five days of receipt of such notice. The Commissioner shall review such response and make a final determination whether to issue registration.

(f) (1) The Commissioner may, after notice and the opportunity for a hearing, revoke the registration of a wholesaler or seafood deliverer for any of the actions set forth in subdivision (b) of §22-217 of the Administrative Code or for the reasons set forth in §22-218 of such Code or any rule promulgated thereunder. Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a wholesale seafood business or a seafood delivery business creates an imminent danger to life or property, immediately suspend the registration of such business without a prior hearing, provided that, the registrant may appeal such suspension to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing shall be provided on an expedited basis within a period not to exceed four business days and the Commissioner shall issue a final determination no later than four days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a wholesaler or seafood deliverer whose registration has been suspended without a prior hearing, permit such wholesaler or seafood deliverer to remain in the market area for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's best judgment, such permission is consistent with the safety of the public and the market area.

(2) In addition to the reasons set forth in paragraph (i) of this subdivision, if at any time subsequent to the registration of a wholesaler or seafood deliverer the Commissioner has reasonable cause to believe that such wholesaler or seafood deliverer is not of good character, honesty and integrity, the Commissioner may require such wholesaler or seafood deliverer to be fingerprinted, provide the background information set forth in §22-216 of the Administrative Code as required by the Part II of the form attached as Appendix B of this subchapter and pay the fees therefor set forth in subdivisions (e) and (f) of §1-25 of this subchapter. Upon a determination, after consideration of the factors set forth in subdivision (b) of §22-216 of the Administrative Code, that a wholesaler or seafood deliverer lacks good character, honesty and integrity, the Commissioner may, after notice and the opportunity for a hearing, revoke the registration of such wholesaler or seafood deliverer.

(g) Suspension or revocation of a registration shall require the immediate surrender of all photo identification cards issued to the principals, employees and/or agents of the registrant. Violation of the provisions of this subdivision may result in revocation of a suspended registration or the imposition of penalties as provided in §22-215 of the

Administrative Code.

(h) For the purposes of this section, wholesaler or seafood deliverer shall mean the wholesale seafood or seafood delivery business entity, as the case may be, and all the principals thereof.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-33

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-33 Wholesale Operations.

(a) **Restrictions on use of Registration Number and Stand Permit.** (1) A wholesaler shall not transfer his or her registration number or stand permit as part of the sale of such wholesale business.

(2) A wholesaler shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a wholesaler seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a wholesale business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a wholesaler registration number to such sublessee. Absent such registration number no wholesaler may permit a sublessee to operate a wholesale seafood business on such premises.

(3) A wholesaler shall not allow any other person to place seafood in the space for which a stand permit has been issued to such wholesaler, except that a wholesaler may, as provided in subdivision (d) of §22-209 of the Administrative Code, permit the use of such space by another registered wholesaler who has received a shipment of seafood that cannot be accommodated in the space from which such registered wholesaler operates. No fee may be charged for such temporary use and any such use must be reported, with details specifying the dates, times and extent of such use, as soon as practicable. A wholesaler may also, as set forth in subdivision e of §22-209 of the Administrative Code and pursuant to the provisions regarding approval of the commissioner and limitations upon the charging of fees set forth in

such subdivision, allow the use by no more than one other registered wholesaler on other than a temporary basis of no more than forty-nine percent of the space for which a stand permit has been issued.

(b) **Furnishing and Display of Registration Numbers.** (1) A wholesaler shall furnish, by telephone or in writing, to each supplier, distributor or other person from whom the wholesaler orders or agrees to receive seafood the registration number and the name of the business to which such registration number has been issued.

(2) The name and registration number of a wholesale seafood business shall be affixed and prominently displayed on all premises from which such wholesale seafood business is conducted.

(c) **List of Registrants.** The Market Manager shall maintain and publish a list of all wholesalers who possess wholesaler registration numbers and stand permits. The Market Manager shall make such list available to suppliers, shippers and truckers and shall, upon request, verify to suppliers, shippers and truckers whether a person or entity possesses a wholesaler registration number and stand permit.

(d) **Record Keeping.** Wholesalers shall retain copies of all bills from and records of payments to unloaders, suppliers and shippers of seafood and payment from retailers. Such bills and records shall accurately reflect the amount of seafood involved in each transaction and shall, along with all other records produced in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(e) **Workers' Compensation Insurance.** A wholesaler shall submit proof that he, she or it has obtained the required workers' compensation and disability benefits coverage, or that he or she is exempt from the Worker's Compensation Law, §57, and the Disability Benefits Law, §220, subdivision 8. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 **Application for Certificate of Workers' Compensation Insurance;**

DB-120.1 **Employer's Application for Certificate of Compliance with Disability Benefits Law;**

S1-12 **Affidavit certifying that compensation has been secured.**

Proof that no coverage is required can be provided by submitting the following Workers' Compensation Board form;

C-105.21 **Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.**

(f) **Liability Insurance.** A wholesaler shall procure and shall maintain throughout the term of the permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the wholesale business pursuant to a permit. The wholesaler may purchase such policies in conjunction with one or more other wholesalers, provided that the coverages described in this subdivision are maintained with respect to each wholesaler.

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the wholesaler, whether or not owned by the wholesaler, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(3) Employers' Liability Insurance with limits of one million dollars per accident.

The policy or policies of insurance required by these rules shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules will result in automatic cancellation of the permit. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of insurance affecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) **Payment Bond.** A wholesaler shall, in the discretion of the Commissioner, procure and maintain a payment bond or other security ensuring payment to suppliers of such wholesaler in an amount, if any, to be determined by the Commissioner taking into account such factors as the wholesaler's volume of business and credit worthiness.

(h) **Liability for Violations.** A wholesaler shall be jointly and severally liable for any violation of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter by any of his or her employees or agents.

(i) **Prohibited Acts.** (1) A wholesaler and its employees and agents shall not solicit an unloader to unload a truck out of order.

(2) A wholesaler and its employees and agents shall not interfere with the Market Manager in the discharge of his or her functions or interfere with or otherwise obstruct the orderly functioning of the Market.

(3) A wholesaler and its employees and agents shall not authorize another person to use the name of the business to which a registration number has been issued for such wholesale seafood business.

(4) A wholesaler and its employees and agents shall not authorize another person to conduct a wholesale seafood business with the registration number that has been issued to such wholesaler.

(5) A wholesaler and its employees and agents shall not sublease or otherwise allow the use of his or her premises by a person who does not possess a registration number issued by the Commissioner pursuant to this subchapter.

(6) A wholesaler and its employees and agents shall not authorize another person to use his or her stand permit to place seafood upon the street, except as provided in paragraph (3) of subdivision (a) of this section.

(7) A wholesaler and its employees and agents shall not conduct a wholesale seafood business under any name other than the name under which such business has been registered with the Market Manager.

(8) A wholesaler and its employees and agents shall not discard seafood unless such seafood has been rendered unfit for human consumption by chemical treatment, sealed in a tamper-proof container, or otherwise treated in a manner approved by the Market Manager and shall comply with other sanitary procedures specified by the Market Manager.

(9) A wholesaler and its employees and agents shall not violate applicable federal, state and city regulations regarding the proper handling of seafood.

(10) A wholesaler and its employees and agents shall not fail to notify the Market Manager of any change in the information provided pursuant to §1-32 of this subchapter with respect to the composition or ownership of the wholesale business, or of any change in the employment status of its employees.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

Subd. (h) amended City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See

T66 Chap 1 Subchap D footnote]

Subd. (i) par (1)-(10) amended City Record Aug. 18, 1997 eff. Sept.

17, 1997. [See T66 Chap 1 Subchap D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Initiation of a fight by the respondent, an employee of a seafood wholesaler at the Fulton Fish Market, during which the respondent struck one market inspector and injured a second who came to the aid of the first, constituted interference with the orderly functioning of the market pursuant to subparagraph (i)(2) of this section. Department of Business Services v. Fiore, OATH Index No. 722/97 (Apr. 22, 1997), aff'd, _____ AD2d _____, 667 NYS2d 244 (1st Dept. 1998).

¶ 2. By accepting and selling seafood erroneously delivered to him instead of to another wholesaler, attempting to impede recovery of the seafood, and attempting to bribe an undercover investigator who he believed to be a potential witness, the president of a registered seafood wholesaler violated subparagraph (i)(2) of this section, requiring the revocation of the wholesaler's registration number pursuant to §1-32(f) of this chapter, and the surrender of the photo ID cards of the wholesaler's principals, employees and agents pursuant to §1-32(g) of this chapter. Department of Business Services v. A & S Seafood, OATH Index No. 1268/96 (Apr. 2, 1996).

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

42 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-34

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-34 Seafood Delivery Operations.

A seafood deliverer shall be subject to the requirements for conducting a seafood delivery business that are contained in this section.

(a) The Market Manager may designate an area or areas within the Market Area where Seafood Deliverers shall park while picking up seafood from wholesalers for delivery.

(b) (1) Seafood deliverers shall possess a valid driver's license as required by §501 of the Vehicle and Traffic Law.

(2) All vehicles employed in a seafood delivery business shall possess: proper vehicle registration as required by §401 of the Vehicle and Traffic Law; a valid inspection sticker obtained pursuant to the provisions of Article 5 of the Vehicle and Traffic Law; and insurance coverage as required by Article 6 of the Vehicle and Traffic Law.

(3) All vehicles employed in a seafood delivery business shall display a sticker or decal issued by the Market Manager in a location to be designated by the Market Manager.

(c) A seafood deliverer shall not offer seafood for sale within the Market Area for resale to the public unless the seafood deliverer is also registered as a wholesaler.

(d) Seafood deliverers shall comply at all times with all applicable Federal, State and City regulations regarding

the proper handling of seafood.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-35

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-35 Regulation for Safety, Order and Health in the Market Area.

In order to ensure safe, orderly and healthful conditions in the Market Area, the Market Manager may take measures, including but not limited to the following: designate areas in which activities not otherwise regulated by the provisions of this subchapter and related to the distribution of seafood in the Market Area may be conducted; prohibit any activity that may present a threat of (i) intimidation or disruption of businesses in the Market Area, (ii) traffic congestion or (iii) unsafe, unlawful or unsanitary conditions, and exclude from the Market Area any person or business conducting such activity; regulate the movement of traffic throughout the Market Area; and prescribe methods for the sanitary disposal of waste in the Market Area. Where any provision of this subchapter is inconsistent with a provision of Chapter 1 of this title, the provisions of this subchapter shall apply.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-36

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-36 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to an unloader, a loader, wholesaler, seafood deliverer or any other person engaged in an activity related to the distribution of seafood in the Market Area for the violation of any provision of Chapter 1-A of Title 22 of the Administrative Code or of this subchapter. Except as otherwise provided in subdivision (b) of this section, any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board.

(b) (1) Any person who operates without a license in violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code shall be guilty of a misdemeanor and, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars or imprisonment not to exceed six months, or both and; and any such person shall also be subject to a civil penalty of not more than five thousand dollars for each such violation to be recovered in a civil action or administrative proceeding before the environmental control board. The corporation counsel is authorized to commence a civil action on behalf of the city for injunctive relief to restrain or enjoin any violation of such subdivisions and for civil penalties.

(2) Any person who interferes or attempts to interfere with the conduct of, or who intentionally or without the permission of the owner or other person lawfully in possession of such property destroys or damages property or equipment associated with, loading or unloading authorized pursuant to Chapter 1-A of Title 22 of the Administrative

Code and this subchapter, shall be guilty of a misdemeanor and, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars or by imprisonment not exceeding six months, or both; and any such person shall also be subject to a civil penalty of not more than five thousand dollars to be recovered in a civil action or administrative proceeding before the Environmental Control Board for each day that the violation continues.

(3) An unloading business, a loading business, a wholesale seafood business and a seafood delivery business shall be liable for any violation of Chapter 1-A of Title 22 of the Administrative Code and of this subchapter committed by an employee or agent of such business entity.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-37

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-37 Seizure and Forfeiture.

Any police officer or authorized officer or employee of the department may, upon service of a notice of violation upon the owner or operator of a vehicle or other property or equipment, seize such vehicle or other property or equipment which such police officer or authorized officer or employee has reasonable cause to believe is being used in connection with an act constituting a violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code. In addition to any other fines and penalties, a vehicle or other property or equipment which has been seized pursuant to this section and all rights, title and interest therein shall be subject to forfeiture upon notice and judicial determination thereof if the owner of such vehicle or other property or equipment has been found liable by a court or in a proceeding before the Environmental Control Board on one or more prior occasions for using such vehicle or such other property or equipment in connection with an act constituting a violation of subdivision (a) of §22-204, subdivision (a) of §22-206, subdivision (c) of §22-208 or §22-219 of the Administrative Code. Seizure and forfeiture pursuant to this section shall be conducted in accordance with the requirements and procedures governing such seizure and forfeiture pursuant to §22-220 of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-38

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-38 Hearings.

(a) Where a hearing is conducted in relation to the suspension or revocation of a photo identification card, license or registration pursuant to the provisions of §§1-23, 1-28 or 1-32 of this subchapter, the hearing officer shall set a time and place for such hearing and the Department shall provide the respondent with notice of such time and place no less than ten days prior to the date of the hearing, except that in the case of an immediate suspension requiring an expedited hearing pursuant to subdivision (c) of §1-28 or subdivision (f) of §1-32 of this subchapter, such notice shall be provided no later than one business day following such suspension.

(b) All parties shall be afforded due process of law, including the opportunity to be represented by counsel, to issue subpoenas or request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present arguments on the law and facts. Relevant material and reliable evidence shall be admitted without regard to technical or formal rules or laws of evidence.

(c) All persons giving testimony as witnesses shall be placed under oath.

(d) The hearing officer shall preside over the hearing and shall have all powers necessary to conduct fair and impartial hearings, to avoid delay in the disposition of proceedings, and to maintain order, including but not limited to the following: to compel the attendance of witnesses and the production of documents; to issue orders for discovery upon motion for good cause shown; to rule upon offers of proof and receive evidence; to regulate the course of the

hearing and the conduct of the parties and their counsel therein; to hold conferences for the purposes of settlement or any other proper purpose; to interrogate witnesses; to make recommended findings of fact and recommended decisions.

(e) The Market Manager shall have the burden of proof in establishing that the respondent has committed or caused the violation charged in the notice, but the proponent of any factual position shall be required to sustain the burden of proof with respect thereto. The notice of violation shall constitute **prima facie** evidence of the facts stated therein.

(f) The hearing officer shall provide or arrange for either a stenographically reported or mechanically recorded verbatim transcript of the hearing. Such transcript and all exhibits received in evidence shall constitute the hearing record.

(g) As soon as possible after the hearing, the hearing officer shall present recommended findings of fact and a recommended decision to the Commissioner. The Commissioner shall make a final determination and notify the respondent, by first class mail addressed to the business address of such respondent, of such determination. Where the respondent is an employee of a business required to be licensed or registered pursuant to Chapter 1-A of the Administrative Code and this subchapter, notice of the final determination shall be by first class mail to the address provided for such employee pursuant to §§1-25 and 1-32 of this subchapter.

(h) Failure of a respondent to make a timely written response, appear or proceed as required by the hearing officer shall constitute a default. Upon default, the hearing officer shall make such recommended findings and recommended decision as is appropriate under the pleadings and such evidence as he or she shall have received. The Commissioner shall make a final determination and shall notify the respondent, by first class mail addressed to the place of business of such respondent, of such determination. Where the respondent is an employee of a business required to be licensed or registered pursuant to Chapter 1-A of the Administrative Code and this subchapter, notice of the final determination shall be by first class mail to the address provided for such employee pursuant to §§1-25 and 1-32 of this subchapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

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[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-39

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-39 Notice.

Notice required pursuant to this chapter may be served by first class mail addressed to the business address of an unloader, a loader, a wholesaler or a seafood deliverer as provided by such business pursuant to §§1-25 and 1-32 of this subchapter, and all notice served upon an employee or an agent of such business may be served by first class mail to the address listed for such employee or agent in the information provided pursuant to such section or §1-12 of this chapter. Notice may also be served by personal service or in any other manner reasonable calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record May 3, 1996 eff. June 2, 1996. [See Note 1]

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

NOTE

1. Statement of Basis and Purpose in City Record May 3, 1996:

Local Law Number 50 for the Year 1995 authorizes the Commissioner of the Department of Business Services to promulgate rules for the implementation of the requirements of Local Law 50, including procedures for issuing notices

of violation and notices of proceedings for suspensiions and revocations of licenses, registrations and photo identification cards. This rule is being amended to provide flexibility in the manner of services. This rule was not included in the Agency's Regulatory Agenda because it was not anticipated at the time the Regulatory Agenda was published.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-40

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-40 Applicability When Department Performs Unloading or Loading Services.

Sections 1-24 through 1-28 of this subchapter, relating to licensing requirements and conditions for unloading and loading businesses shall not apply where the Commissioner determines, pursuant to paragraph (ii) of subdivision (g) of §22-204, paragraph (ii) of subdivision (g) of §22-206 or §22-208 of the Administrative Code, that the Department, a designee of the Department, an entity under contract to the Department, or a combination thereof shall provide unloading services or loading services in the Market Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets

by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-41

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER B*3 FULTON FISH MARKET

§1-41 Separability.

If any provision of this subchapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995.

FOOTNOTES

3

[Footnote 3]: * Subchapter B added City Record July 31, 1995 eff. Aug. 30, 1995. Note Statement of Basis and Purpose of Proposed Rule: The Commissioner of Business Services is authorized to regulate public markets by Section 1301 of the New York City Charter and Section 72-p of the General Municipal Law, and has been vested with enhanced authority to promulgate rules for the regulation of activities in the Fulton Fish Market

Distribution Area by Section 22-223 of the Administrative Code of the City of New York, as enacted by the City Council as Local Law No. 50 for the Year 1995 as amended by Intro. No. 573 enacted by the City Council on June 14, 1995. These new subchapters implement the licensing, registratiion and other provisions of Local Law No. 50 and such Intro. No. 573 with respect to unloading, loading, wholesaling and seafood delivery activities in the Fulton Fish Market Distribution Area, wholesaler registration outside the Fulton Fish Market Distribution Area, and the regulation of any Seafood Distribution Areas outside the Fulton Fish Market Distribution Area.

Rules of the City of New York

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

66 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-51 Scope.

This subchapter shall govern the registration of wholesale seafood businesses outside the Fulton Fish Market Distribution Area, and the licensing, registration and other requirements applicable in a Seafood Distribution Area declared by the Commissioner pursuant to §22-222(b) of the Administrative Code.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-52

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-52 Definitions.

Unless otherwise provided in this subchapter, the terms used herein shall have the meanings provided for such terms in §1-22 of subchapter B of this chapter.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-53

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-53 Wholesaler Registration Required.

(a) As of thirty days following the effective date of this subchapter, no wholesaler shall conduct a wholesale seafood business in the City of New York unless such business has been registered with the Commissioner and received a registration number from the Commissioner.

(b) A person wishing to register a wholesale seafood business shall provide such information as the Commissioner shall require on Part I of the form prescribed by the Commissioner, attached as Appendix B of this subchapter, which form shall be signed by all the principals of such business and certified under penalty of perjury. The fee for registration of a wholesale business shall be three hundred dollars ($300).

(c) A wholesaler shall notify the Commissioner within ten calendar days of any changes in the ownership composition of the wholesale seafood business and any material change in the other information supplied on the registration form submitted pursuant to subdivision b of this section and shall be responsible for notifying the Commissioner of any such change throughout the term of the registration.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-54

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-54 Restrictions on Use of Registration Number.

A wholesaler shall not transfer his or her registration number as part of the sale of such wholesale seafood business, nor shall a wholesaler allow the use by any other person of the registration number or the name of the business to which the registration number has been issued.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-55

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-55 List of Registrants.

The Market Manager shall maintain and publish a list of all wholesalers who possess wholesaler registration numbers issued pursuant to this subchapter. The Market Manager shall make such list available to suppliers, shippers and truckers and shall, upon request, verify to suppliers, shippers and truckers whether a person or an entity possesses a wholesaler registration number.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-56

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-56 Registration Requirements in a Seafood Distribution Area.

Notwithstanding any provision of this subchapter, where the Commissioner, pursuant to §22-222 of the Administrative Code, declares an area where one or more wholesale seafood businesses have been established to be a Seafood Distribution Area, the provisions governing wholesaler registration set forth in Subchapter B of this Chapter and in Chapter 1-A of Title 22 of the Administrative Code shall apply. When such provisions are applied to a Seafood Distribution Area, the terms "Fulton Fish Market distribution area" and "market area" as contained therein shall be deemed to include such Seafood Distribution Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B

footnote.

Rules of the City of New York

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

66 RCNY 1-57

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-57 Licensing and Seafood Delivery Business Registration Requirements in a Seafood Distribution Area.

Where the Commissioner, pursuant to §22-222 of the Administrative Code, declares an area where one or more wholesale seafood businesses have been established to be a Seafood Distribution Area, all unloading businesses, loading businesses, and seafood delivery businesses which operate within such area, and the employees and/or agents of such businesses, shall be subject to all the provisions governing unloading businesses, loading businesses, and seafood delivery businesses, and the employees and/or agents of such businesses, set forth in subchapter B of this Chapter and Chapter 1-A of Title 22 of the Administrative Code, except as may be otherwise determined by the Commissioner pursuant to §22-222(c) of the Administrative Code. When such provisions are applied to a Seafood Distribution Area, the terms "Fulton Fish Market distribution area" and "market area" as contained therein shall be deemed to include such Seafood Distribution Area.

HISTORICAL NOTE

Section added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1-58

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 1 MARKETS

SUBCHAPTER C*1 WHOLESALE SEAFOOD BUSINESS OUTSIDE FULTON FISH MARKET

§1-58 The Seafood Distribution Area at Hunts Point.

(a) The following area is declared to be a Seafood Distribution Area pursuant to §22-222 of the Administrative Code:

(1) the area in Hunts Point in the Borough of the Bronx, which includes the structure known as the New Fulton Fish Market at Hunts Point and all parking and other areas adjacent thereto, beginning at the intersection of the bulkhead line in the East River and the easterly street line of Halleck Street extended, thence northwesterly to the intersection of the easterly street line of Halleck Street extended and the southerly street line of Food Center Drive, thence easterly along the southerly street line of Food Center Drive to the intersection of the southerly street line of Food Center Drive and the southerly street line of Farragut Street, thence easterly along the southerly street line of Farragut Street continuing to its easterly terminus, thence easterly to the intersection of Farragut Street extended and the bulkhead line in the East River, thence westerly along said bulkhead line to the place of beginning, but excluding (i) the southern portion of the above-described area that is under the jurisdiction of the Department of Correction and includes a prison barge and adjacent parking lot and other facilities and areas controlled by the Department of Correction, and (ii) the eastern portion of the above-described area that is under the jurisdiction of the Department of Sanitation and includes a marine transfer station and other facilities and areas controlled by the Department of Sanitation; and

(2) the parking lot for use by persons employed at the New Fulton Fish Market at Hunts Point, including the pathway connecting such parking lot with Food Center Drive and the driveway connecting such parking lot with

Halleck Street, that lies northwest of the area described in paragraph (1) of this subdivision, northeast of Halleck Street, southeast of the northerly street line of Viele Street extended, and southwest of the Hunts Point Meat Market.

The aerial photograph constituting Appendix A of this subchapter illustrates the Seafood Distribution Area at Hunts Point described above. Appendix A is for illustration purposes only, and the area indicated therein is not necessarily to scale. If there is a conflict between the description set forth in this subdivision and the area illustrated by such photograph, the description set forth in this subdivision shall prevail.

(b) The following provisions relating to licenses, photo identification cards and stand permits shall apply with respect to the Seafood Distribution Area described in subdivision (a) of this section.

(1) Loading and unloading licenses issued for the Fulton Fish Market distribution area shall not be valid for use in the Seafood Distribution Area described in subdivision (a) of this section unless specifically so amended. If amended, such licenses shall be valid for the duration of their terms, unless suspended or revoked in accordance with §1-28 of this chapter, and may be renewed in accordance with §1-25(c) of this chapter.

(2) As of the date seafood distribution activities commence in the Seafood Distribution Area described in subdivision (a) of this section, photo identification cards issued for the Fulton Fish Market distribution area shall be valid for use in such area described in subdivision (a), unless suspended or revoked in accordance with §1-23(d) or §1-23(g) of this chapter.

(3) Stand permits issued for the Fulton Fish Market distribution area shall not be valid for the Seafood Distribution Area described in subdivision (a) of this section.

(c) Loading and unloading licenses, photo identification cards, seafood delivery business registrations and stand permits issued for the Fulton Fish Market distribution area shall not be valid for use in such area as of the date seafood distribution activities commence in the Seafood Distribution Area described in subdivision (a) of this section.

(d) Wholesale seafood business registrations shall be valid for the duration of their terms, unless revoked in accordance with §1-32 of this chapter, and may be renewed in accordance with §1-31 of this chapter.

(e) Enforcement action may be taken against any person or entity required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

HISTORICAL NOTE

Section added City Record Oct. 5, 2005 §1, eff. Nov. 4, 2005. [See Note 2]

Section added City Record July 13, 2005 eff. July 13, 2005 until Sept. 11, 2005 per Charter §1043(h)(2).

[See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 13, 2005:

This emergency rulemaking establishes the City's full regulatory authority over the New Fulton Fish Market at Hunts Point and related areas by applying thereto the provisions of Local Law 50, as amended, and Subchapters B and C of Chapter 1 of Title 66 of the Rules of the City of New York.

The rule further provides that previously issued loading and unloading licenses will not be valid for the new seafood distribution area at Hunts Point unless the Business Integrity Commission determines that such licenses should be valid for the new facilities and the licenses are amended accordingly. Wholesaler and seafood delivery business

registrations and classes A and B photo identification cards issued during the period of operation of the old Fulton Fish Market will continue to be valid for the new market until they expire or are suspended or revoked. Any licenses and registrations that will be valid for the new market may be renewed in accordance with applicable law. Stand permits will no longer be valid in the New Fulton Fish Market.

Finally, the rule provides that enforcement action may be taken as of the effective date of the rule against anyone required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

Finding of Imminent Threat to Necessary Service

I hereby make the following finding of an imminent threat to a necessary service to establish that an emergency rulemaking relating to the New Fulton Fish Market at Hunts Point is necessary and proper.

The New Fulton Fish Market at Hunts Point currently is scheduled to begin operations in late July 2005. It will be the largest centralized wholesale seafood distribution center in the United States. The City Council previously found that organized crime had long exercised a corrupting influence over aspects of the seafood distribution industry in the City, including unloading and loading functions, and "that the conditions which have given rise to corruption in the market area can exist in other areas where there are wholesale seafood businesses or concentrations of such businesses." Administrative Code §22-201. In declaring the propriety of establishing the New Fulton Fish Market at Hunts Point and related areas as a seafood distribution area pursuant to §22-222(b) of the Administrative Code, I found that there is reasonable cause to believe that there exists the potential for corrupt, deceptive or unconscionable business practices in such area and that the regulatory apparatus that eliminated organized crime from the Fulton Fish Market is needed to ensure that any organized crime or other corrupt activity does not infiltrate and disrupt the new market. Furthermore, established wholesale markets such as the New Fulton Fish Market at Hunts Point constitute a necessary service within the City.

THEREFORE, I find that the immediate effectiveness of a rule relating to the boundaries of a seafood distribution area that includes the New Fulton Fish Market at Hunts Point and related areas and the status of licenses, registrations, photo identification cards and stand permits issued pursuant to Chapter 1-A of Title 22 of the Administrative Code of the City of New York and Subchapter B of Chapter 1 of Title 66 of the Rules of the City of New York is necessary to address an imminent threat to a necessary service.

Dated: July 8, 2005

Thomas McCormack, Chair Business Integrity Commission Approved: Michael R. Bloomberg Mayor

2. Statement of Basis and Purpose in City Record Oct. 5, 2005: This rule adopts on a permanent basis an emergency rule published on June 13, 2005 that establishes the City's full regulatory authority over the New Fulton Fish Market at Hunts Point and related areas by applying thereto the provisions of Local Law 50 for the year 1995, as amended, and Subchapters B and C of Chapter 1 of Title 66 of the Rules of the City of New York. The rule also provides that previously issued loading and unloading licenses will not be valid for the new seafood distribution area at Hunts Point unless the Business Integrity Commission determines that such licenses should be valid for the new facilities and the licenses are amended accordingly. Wholesaler and seafood delivery business registrations and classes A and B photo identification cards issued during the period of operation of the old Fulton Fish Market will continue to be valid for the new market until they expire or are suspended or revoked. Any licenses and registrations that will be valid for the new market may be renewed in accordance with applicable law. Stand permits will no longer be valid in the New Fulton Fish Market. Finally, the rule provides that enforcement action may be taken as of the effective date of the rule against anyone required to be registered with or licensed by the Business Integrity Commission or possess a class A or B photo identification card.

FOOTNOTES

1

[Footnote 1]: * Subchapter C added City Record July 31, 1995 eff. Aug. 30, 1995. See T66 Subchap B footnote.

Rules of the City of New York

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

66 RCNY 1 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

APPENDIX A

HISTORICAL NOTE

Appendix A added City Record Oct. 5, 2005 eff. Nov. 4, 2005. [See T66 §1-58 Note 2]

Appendix A added City Record July 13, 2005 eff. July 13, 2005 until Sept. 11, 2005 per Charter §1043(h)(2). [See T66 §1-58 Note 1]

Rules of the City of New York

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

66 RCNY 1-61

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-61 Scope.

This subchapter shall govern the registration of and other requirements relating to (a) Market businesses located and operating within the fulton fish market distribution area or other seafood distribution areas, (b) labor unions and labor organizations representing or seeking to represent employees directly involved in the movement, handling or sale of goods sold in the fulton fish market distribution area or other seafood distribution areas, and (c) wholesale trade associations representing wholesalers located and operating within the fulton fish market distribution area or other seafood distribution areas.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis

and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-62

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-62 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

Market business. The term "market business" shall mean any business located or operating within the fulton fish market distribution area or other seafood distribution areas that is engaged in providing goods or services to wholesalers or retail purchasers in such distribution area that are related to the conduct of a wholesale business or the purchase of seafood products by retailers or others, or that receives such goods within such distribution area for delivery, forwarding, transfer or further distribution outside such distribution area. "Market business" shall include, but not be limited to, the supply of ice or refrigeration services, security, and transfer or distribution of seafood, and shall exclude suppliers of seafood.

Labor union. The terms "labor union" or "labor organization" refers to a union or other organization that represents or seeks to represent, employees directly involved in the movement, handling or sale of goods in the Market Area. Notwithstanding the foregoing, such terms shall not include: (i) a labor union that represents or seeks to represent fewer than two hundred employees in the Market Area, any other seafood distribution areas, or any other public wholesale market, or any combination thereof; (ii) a labor union representing or seeking to represent clerical or other office workers, construction or electrical workers, or any other workers temporarily or permanently employed in a public wholesale market for a purpose not directly related to the movement, handling or sale of goods in such market; (iii) affiliated national or international labor unions of local labor unions required to register pursuant to this provision.

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

Officer. The term "officer" shall mean any person holding an elected position or any other position involving participation in the management or control of a wholesale trade association or of a labor union or labor organization required to register pursuant to §1-72 or §1-74 of this subchapter.

Wholesale trade association. The term "wholesale trade association" shall mean an entity, the majority of whose members are wholesale businesses and/or market businesses, having as a primary purpose the promotion, management or self-regulation of the fulton fish market distribution area or other seafood distribution areas or the facilities utilized by such businesses, and shall include, but not be limited to a corporation, cooperative, unincorporated association, partnership, trust or limited liability partnership or company, whether or not such entity is organized for profit, not-for-profit, business or non-business purposes.

Unless otherwise provided in this subchapter, all other terms used herein shall have the meanings provided for such terms in §1-22 of subchapter B of this chapter.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-63

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-63 Market Business Registration Required.

(a) As of fifteen days following the effective date of this subchapter, no Market business shall operate in the Market Area unless such business has been registered with the Commissioner and received a registration number from the Market Manager.

(b) Notwithstanding subdivision (a) of this section, a Market business that has been operating in the Market Area on or before the effective date of Local Law 28 of 1997, and which has filed a registration application with the Commissioner within fifteen days of the effective date of this subchapter, may continue to operate in the Market Area beyond fifteen days following the effective date of this subchapter unless and until (1) the Commissioner has denied the application for registration of such business, or (2) in cases where the Commissioner has required any or all of the principals of such Market business to be fingerprinted, submit background information and appear for an interview pursuant to §§22-253(b) and 22-259(a) of the Code, such principal has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting, or to submit the required information, or to appear for an interview, or to submit the fees for a background investigation in accordance with §1-25 of subchapter B of this chapter. For the purposes of this subdivision, the term "Market business" shall mean the Market business entity, and all the principals thereof.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-64

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-64 Issuance of Registration.

(a) A person wishing to register a Market business shall provide the information requested in the registration application form provided by the Department, which form shall be signed by all principals of such business, and accompanied by the certification form provided by the Department, fully executed by all principals of such business.

(b) A Market business is required to notify the Commissioner of any change in the ownership composition of the business, any changes regarding persons employed by the business, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted pursuant to subdivision (a) of this section during the term of its registration, and shall notify the Commissioner, in writing, of any such change within ten calendar days thereof.

(c). In the event that a registrant notifies the Commissioner of the proposed addition of a new principal (other than a person or entity that becomes a principal through the acquisition of outstanding shares of a business whose equity securities are registered under Federal and State securities laws and publicly traded on a national or regional stock or security exchange) as required by subdivision b of this section, the registrant shall simultaneously submit the registration application form provided by the Department completed, signed and certified by such prospective principal. Except where the Commissioner determines within 15 days, based upon information available to him or her, that the addition of such new principal may have a result inimical to the purposes of Chapter 1-B of Title 22 of the Code, the registrant may add such new principal pending the completion of review by the Commissioner. The Commissioner may

waive or shorten such 15 day period upon a showing that there exists a **bona fide** business requirement therefor. The registrant shall be afforded an opportunity to demonstrate to the Commissioner that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of Chapter 1-B of Title 22 of the Code. If upon the completion of such review, the Commissioner determines that such principal lacks good character, honesty and integrity, the registration shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within the time period prescribed by the Commissioner.

(d) Notification pursuant to this section shall be signed and sworn to before a notary public.

(e) Notwithstanding any provision of this subchapter: (1) the Commissioner may, when the Commissioner determines that there is reasonable cause to believe that any or all of the principals of an applicant for registration, or a registrant, lack(s) good character, honesty or integrity, require that such principal(s) (i) be fingerprinted in accordance with §22-259(a)(i) of the Code; (ii) provide to the Commissioner the information requested in the background investigation form provided by the Department within 15 days of such request; (iii) appear to be interviewed by the department of investigation or the Department; and (iv) pay the fee for a background investigation in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to register a Market business for the reasons set forth in subparagraphs b, c, d and e of §22-259 of the Code, or may defer a decision whether to register such Market business when an indictment or a criminal or civil action is pending as provided in subparagraph (b)(ii) of such section.

(f) A Market business denied registration for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code shall be given notice of the reasons for such denial, and may respond in writing to the Commissioner within ten days of the mailing of such notice. The Commissioner shall review such response and make a final deter- mination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-65

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-65 Photo Identification Cards Required.

(a) On or after the fifteenth day following the effective date of this subchapter, no person who is an officer, principal, employee or agent of any Market business operating in the fulton fish market distribution area or other seafood distribution area who performs any function directly related to the provision of goods or services to wholesalers or retail purchasers in such area shall perform such function without having been issued a photo identification card issued by the Commissioner pursuant to the provisions of this section and §22-252 of the Code. Notwithstanding the foregoing, officers, principals, employees or agents of any Market business required to have photo identification cards, and who have filed applications therefor within fifteen days of the effective date of this subchapter and obtained temporary photo identification cards, may continue to perform such functions fifteen days after the effective date of this subchapter unless and until (1) the application of such person for a photo identification card has been denied, or (2) the temporary photo identification card of such person has been revoked, or (3) in cases where the Commissioner has required such person to be fingerprinted, submit background information and appear for an interview pursuant to §22-259(a) of the Code, such person has failed, within the time period prescribed by the Commissioner, to submit to such fingerprinting or to submit the required information, or to appear for an interview.

(b) Photo identification cards shall be in the possession of principals and employees of Market businesses at all times when such persons are in the Market Area, and shall be produced upon demand by an authorized employee or agent of the Department, the department of investigation or the police department.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-66

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-66 Temporary Photo Identification Cards.

The Market Manager may issue temporary photo identification cards to all officers, principals, employees and agents of Market businesses, and to seasonal employees of Market businesses, who have made timely applications and tendered the requisite fee payments in accordance with this subchapter. Such temporary identification cards shall be valid unless and until the Commissioner has (a) issued or denied a permanent identification card, or (b) such temporary card has previously been revoked in accordance with the procedures set forth in §1-70 of this subchapter.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-67

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-67 Issuance of Photo Identification Cards.

(a) A person wishing to apply for a photo identification card shall provide the information required in the application form provided by the Department, which form shall be signed and certified under penalty of perjury by the applicant.

(b) Persons required to have photo identification cards shall notify the Commissioner of any material change in the information submitted pursuant to subdivision (a) of this section, including without limitation, any change in employment, as well as any arrests or criminal convictions, and shall notify the Commissioner, in a signed and notarized writing, of any such change within ten calendar days thereof.

(c) Notwithstanding any provision of this subchapter (1) the Commissioner may, where he or she has reasonable cause to believe that an applicant for or the holder of a photo identification card lacks good character, honesty or integrity, require that such person: (i) be fingerprinted, (ii) provide, within the time required by the Commissioner, the background information required in paragraph (ii) of subdivision (a) of §22-259 of the Code, and as requested in the background investigation form provided by the Department, (iii) appear to be interviewed by the department of investigation or the Department, and (iv) tender the requisite fees therefor in accordance with §1-25 of subchapter B of this chapter.

(2) The Commissioner may refuse to issue a photo identification card for the reasons set forth in subparagraphs b,

d and e of §22-259 of the Code, or may defer a decision whether to issue such card when there is an indictment or a criminal or civil action pending against or involving the applicant as provided in subparagraph (b)(ii) of such section.

(d) A person whose application for a photo identification card has been denied by the Commissioner for lack of good character, honesty or integrity pursuant to §22-259(b) of the Code, shall be given notice of the reasons for such denial and may respond in writing to the Commissioner within ten days of the mailing of such notice. The Commissioner shall review such response and make a final determination.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

66 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-68

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-68 Terms and Fees.

(a) A registration issued pursuant to this subchapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(b) The fee for registration of a Market business shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

(c) The fee for photo identification cards and temporary photo identification cards shall be twenty dollars ($20).

(d) The fee for the replacement of any photo identification card that has been lost or stolen shall be fifteen dollars ($15).

(e) A Market Business shall be responsible for the payment of any fee imposed by this section with respect to an employee of such business or any person seeking to become an employee of such business.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-69

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-69 Market Business Operations.

(a) (1) A Market business shall not transfer its registration number as part of the sale of such Market business.

(2) A Market business shall not allow the use by any other person of the registration number or the name of the business to which such registration number has been issued. In the event that a Market business seeks to sublease or otherwise allow the use of its premises, or any portion thereof, for the operation of a Market business by another person, where such sublease is permitted under the terms of the lease, the Commissioner may, upon application and payment of the required fee by the prospective sublessee pursuant to the provisions of these rules, issue a registration number to such sublessee. Absent such registration number no Market business may permit a sublessee to operate a Market business on such premises.

(b) **Furnishing and Display of Registration Numbers.** The name and registration number of a Market business shall be affixed and prominently displayed on all premises and vehicles from which such Market business is conducted.

(c) **Record Keeping.** Market businesses shall retain copies of all invoices and other documents reflecting deliveries or payments from or to suppliers and customers. Such books and records shall accurately reflect the amount of goods or services involved in each transaction, and shall, along with all other records produced or received in the normal course of business, be retained for a minimum of thirty-six months, and shall be made available for immediate inspection and/or copying upon request by the Market Manager or a designee of the Market Manager.

(d) **Workers' Compensation Insurance.** A Market business shall submit proof that it has obtained the required workers' compensation and disability benefits coverage, or that it is exempt from §57 of the Worker's Compensation Law, and §220(8) of the Disability Benefits Law. Proof of coverage can be established by submitting the following Workers' Compensation Board forms:

C-105.2 Application for Certificate of Workers' Compensation Insurance;

DB-120.1 Employer's Application for Certificate of Compliance with Disability Benefits Law;

S1-12 Affidavit certifying that compensation has been secured.

Proof that no coverage is required can be provided by submitting the following Worker's Compensation Board form:

C-105.21 Statement that applicant does not require Workers' Compensation or Disability Benefits Coverage.

(e) **Liability Insurance.** A Market business shall procure and shall maintain throughout the term of the registration the following types of insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Market business:

(1) Commercial General Liability Insurance with liability limits of no less than one million dollars ($1,000,000.00) combined single limit per occurrence for bodily injury, personal and property damage. The maximum deductible for such insurance shall be no more than twenty-five thousand dollars ($25,000.00).

(2) Business Automobile Liability Insurance covering every vehicle operated by the Market business, whether or not owned by the Market business, and every vehicle hired by the applicant with liability limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(3) Employers' Liability Insurance with limits of one million dollars ($1,000,000) per accident.

(f) The policy or policies of insurance required by this rule shall name the City of New York and the Department of Business Services and any other agency or entity of the City as may be required as parties insured thereunder, and shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except upon sixty days prior written notice to the Commissioner. Failure to maintain continuous insurance coverage meeting the requirements of these rules may result in revocation or suspension of registration. Such policy or policies of insurance shall be obtained from a company, or companies, duly authorized to do business in the State of New York with a Best's rating of no less than A:X unless specific approval has been granted by the Mayor's Office of Operations to accept a company with a lower rating. Two certificates of Insurance effecting the required coverage and signed by a person authorized by the insurer to bind coverage on its behalf, must be delivered to the Commissioner prior to the effective date of the registration.

(g) A Market business shall be jointly and severally liable for any violation of this subchapter by any of its employees or agents.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-70

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-70 Revocation or Suspension of Registration or Photo Identification Cards.

(a) The Commissioner may revoke a temporary photo identification card, and after notice and hearing, revoke or suspend (1) the registration of a Market business or (2) a photo identification card for any of the reasons set forth in §22-260 of the Code, or for violation of any rule promulgated pursuant to §22-266 of the Code, including without limitation §1-69(f) and §1-77 of this subchapter. Notice shall be provided in accordance with the provisions of §1-39 of subchapter 1-B of this chapter. Hearings shall be afforded in accordance with the provisions of §1-38 of subchapter 1-B of this chapter.

(b) Revocation or suspension of registration shall require the immediate surrender to the Market Manager of all photo identification cards issued to the principals, employees and/or agents of the registrant. If a registration has been suspended, violation of the provisions of this subdivision may result in immediate revocation of a registration and/or the imposition of penalties as provided in §22-258 of the Code.

(c) Revocation or suspension of photo identification cards (including temporary photo identification cards) shall require the immediate surrender of such cards to the Market Manager.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-71

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-71 Emergency Suspension of Registration or Photo Identification Cards.

Notwithstanding the foregoing provisions, the Market Manager may, if he or she determines that the operation of a Market business or the presence of any person in the Market Area creates an imminent danger to life or property, immediately suspend the registration of such business or the photo identification card of such person, as applicable, without a prior hearing, provided that, such suspension may be appealed to a Deputy Commissioner of the Department, and if the Deputy Commissioner upholds the suspension imposed by the Market Manager, an opportunity for a hearing pursuant to the provisions of §1-38 of subchapter B of this chapter shall be provided on an expedited basis within a period not to exceed four business days, and the Commissioner shall issue a final determination no later than four business days following the conclusion of such hearing; and provided further that the Commissioner may, upon application by a Market business whose registration has been suspended without a prior hearing, permit such Market business to remain in the Market Area for such time as is necessary to allow for the expeditious sale, consignment or removal of a perishable product if, in the Commissioner's judgment, such permission is consistent with the safety of the public and the Market Area.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

70 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1-72

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-72 Labor Union and Labor Organization Registration Required.

(a) Labor unions and labor organizations and officers of labor unions and labor organizations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a labor union or labor organization and officers of trade associations shall be three hundred dollars ($300) and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-73

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-73 Registration Procedure.

(a) A labor union or labor organization shall provide the information requested in the registration application form provided by the Department, which form shall be signed by an officer and certified under penalty of perjury, including (i) the information required by §22-264(a) of the Code, (ii) all criminal convictions, in any jurisdiction, of such labor union or labor organization, (iii) any criminal or civil investigation of such labor union or labor organization by a federal, state or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, (iv) all civil or administrative proceedings to which such labor union or labor organization has been a party involving allegations of racketeering, including but not limited to offenses listed in subdivision nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organization statute (18 U.S.C. §1961 **et seq.**) or of an offense listed in subdivision one of §460.10 of the penal law, as such statutes may be amended from time to time, (v) all judicial or administrative consent decrees entered into by such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter, and (vi) the appointment of an independent auditor or monitor or receiver or administrator or trustee over such labor union or labor organization in the five year period preceding the date of registration pursuant to §1-20.2 of this subchapter. Notwithstanding the foregoing, no labor union or labor organization shall be required to furnish information pursuant to this subdivision which is already included in a report filed by the labor union or labor organization headed by such officer with the Secretary of Labor pursuant to 29 U.S.C. §431 **et seq.** or §1001 **et seq.** if a copy of such report, or of the portion thereof containing such information, is furnished to the Commissioner.

(b) An officer of a labor union or labor organization required to be registered with the Commissioner pursuant to §22-264(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officer under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision (a) or (b) of this section shall be reported to the Commissioner by such union or officer, in a signed and notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

Subd. (a) amended City Record Oct. 24, 1997 eff. Nov. 23, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 24, 1997:

Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorizes the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing registration of labor unions and labor organizations. These rules are being promulgated to further the Department's ability to implement and enforce these requirements. The rules as finally promulgated reflect changes made in response to public comments.

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-74

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-74 Wholesale Trade Association Registration Required.

(a) Wholesale trade associations and officers of wholesale trade associations shall register with the Commissioner within fifteen days following the effective date of this subchapter.

(b) A registration issued pursuant to this chapter shall be valid for three years, and may be renewed for three-year periods thereafter.

(c) The fee for registration of a wholesale trade association and officers of wholesale trade associations shall be three hundred dollars ($300), and the fee for renewal of such registration shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-75

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-75 Registration Procedure.

(a) Wholesale trade associations shall provide the information requested in the registration application form provided by the Department, including the names of all members of such association and of all persons holding office in such association, together with such identifying information as the Commissioner shall request, which form shall be signed by an officer, and certified under penalty of perjury.

(b). Officers of wholesale trade associations required to be registered pursuant to §22-265(b) of the Code shall provide the information requested in the registration application form provided by the Department, which form shall be signed by such officers, and certified under penalty of perjury.

(c) Any material change in the information submitted pursuant to subdivision (a) or (b) of this section shall be reported to the Commissioner, in a notarized writing, within ten calendar days thereof.

(d) Notwithstanding any provision of this subchapter the Commissioner may, if he or she has reasonable cause to believe that any or all of such officers lack good character, honesty or integrity, require that such officer(s) be fingerprinted on ten days' written notice in accordance with §22-264 of the Code, and pay the requisite fees therefor in accordance with §1-25 of subchapter B.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-76

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-76 Record Keeping.

(a) Wholesale trade associations shall retain copies of all invoices and records of payment to and from wholesalers and Market businesses, leases, sub-leases, union contracts, as well as all other records produced or maintained in the normal course of business for a period of three years.

(b) Such books and records shall be made available promptly for immediate inspection and/or copying upon request by the Market Manager or his or her designee.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

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[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the

Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-77

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-77 Prohibited Acts.

(a) No person shall (1) interfere, or attempt to interfere, with the Market Manager, his staff or the employees of the department of investigation or New York Police Department or any other person authorized to enforce the provisions of Chapters 1-A and 1-B of Title 22 of the Code in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the Market Area; and (2) interfere, or attempt to interfere with, or otherwise obstruct any operations or property of any licensees or registrants in the Market Area.

(b) In addition to the foregoing, the following rules also apply to principals, employees and agents of Market businesses, officers of labor unions and labor organizations, and officers of wholesale trade associations. Such persons shall not:

(1) interfere, or attempt to interfere, with the Market Manager, his staff or the employees of the department of investigation in the discharge of their functions or interfere with or otherwise obstruct the orderly functioning of the Market;

(2) authorize another person to use the name of the business to which a registration number has been issued for such market business;

(3) authorize another person to conduct a market business with the registration number that has been issued to such

market business;

(4) conduct a market business under any name other than the name under which such business has been registered with the Market Manager;

(5) violate applicable federal, state or city laws and regulations;

(6) in the case of a Market business, fail to notify the Market Manager and the Commissioner of any change in the information provided pursuant to §1-64 of this subchapter with respect to the composition or ownership of the Market business, and any changes in personnel;

(7) associate with a person whom such person knows or should know is a member or associate of an organized crime group (a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group shall be presumed to be a member or associate of an organized crime group);

(8) make a false or misleading statement to the Department or the department of investigation, or make, file or submit a false statement to a government agency or employee;

(9) threaten or attempt to intimidate a customer or prospective customer;

(10) retaliate against a customer or prospective customer, or a principal, employee or agent of any Market business, wholesaler, loader or unloader that has made a complaint to the Department, the department of investigation or the police department, or any other governmental entity;

(11) falsify any business record;

(12) in the case of a market business, continue to employ a person who has not received a valid photo identification card in accordance with the provisions of this subchapter, or whose photo identification card has been revoked, or whose photo identification card has been suspended during the period of suspension;

(13) utilize any motor vehicle in connection with the operation of such business which is not properly registered with the New York State Department of Motor Vehicles and insured in accordance with §1-69 of this subchapter;

(14) engage in any unfair labor practice under federal or state labor laws as applicable.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1-78

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A

SUBCHAPTER D*2 MARKET BUSINESSES

§1-78 Fines and Penalties.

(a) The Market Manager may issue a notice of violation to a Market business, labor union or labor organization, or wholesale trade association, or any of their principals, employees, agents or officers for the violation of any provision of Chapter 1-B of Title 22 of the Code, this subchapter, or subchapter A of this chapter. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars for each such violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board.

(b) A Market Business shall be jointly and severally liable for any violation of Chapter 1-B of Title 22 of the Code and of this subchapter committed by any of its officers, employees and/or agents acting within the scope of their employment.

HISTORICAL NOTE

Section added City Record Aug. 18, 1997 eff. Sept. 17, 1997. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Aug. 18, 1997 eff. Sept. 17, 1997. Note Statement of Basis and Purpose. Sections 22-223 and 22-266 of the Administrative Code of the City of New York authorize the Commissioner of Business Services to promulgate rules for the implementation of the requirements of Chapters 1-A and 1-B of Title 22 of such Code, including rules governing the registration and other requirements affecting wholesalers, Market businesses, labor unions and labor organizations and wholesale trade associations. These rules are being promulgated in order to provide the Department and the Market Manager with the ability to implement and enforce requirements added by Local Law 28 of 1997 at the Fulton Fish Market. The rules as finally promulgated reflect changes made in response to public comments.

Rules of the City of New York

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

66 RCNY 1 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A APPLICATION FOR CLASS A OR B PHOTO I.D. CARD

APPENDIX A APPLICATION FOR CLASS A OR B PHOTO I.D. CARD

THE CITY OF NEW YORK

DEPARTMENT OF BUSINESS SERVICES

110 WILLIAM STREET

NEW YORK, NEW YORK 10038

Application for Class A or B Photo Identification Card

----------OFFICE USE ONLY----------

Application #: _____ Date Received: _____

Approved: _____ Date: _____ Initials: _____ Denied: _____ Date: _____ Initials: _____ Photo Id #: _____ Date Issued: _____

PLEASE READ THE INSTRUCTIONS ACCOMPANYING THIS APPLICATION CAREFULLY BEFORE COMPLETING IT. APPLICATIONS WHICH HAVE NOT BEEN COMPLETED PROPERLY WILL BE RETURNED TO THE APPLICANT.

APPLICANTS FOR A CLASS A PHOTO IDENTIFICATION CARD NEED ANSWER ONLY THE QUESTIONS ON PARTS I AND II OF THIS APPLICATION.

APPLICANTS FOR A CLASS B PHOTO IDENTIFICATION CARD NEED ANSWER ONLY THE QUESTIONS IN PART I OF THIS APPLICATION.

PLEASE NOTE THAT THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES ("COMMISSIONER") MAY, IN CERTAIN CIRCUMSTANCES, REQUIRE AN APPLICANT FOR A CLASS B PHOTO IDENTIFICATION CARD TO COMPLETE BOTH PARTS OF THIS APPLICATION.

APPLICANTS REQUIRING ADDITIONAL SPACE TO COMPLETE ANY ANSWER MAY ATTACH ADDITIONAL PAGES. EACH PAGE MUST CONTAIN IN THE LOWER LEFT HAND CORNER THE APPLICANT'S SOCIAL SECURITY NUMBER AND MUST BE NUMBERED SEQUENTIALLY AS "Page _____ of _____ pages."

ANY CHANGES IN THE INFORMATION RESPONSIVE TO QUESTIONS MARKED WITH AN ASTERISK (*) MUST BE BROUGHT TO THE ATTENTION OF THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES, IN WRITING, WITHIN 10 DAYS AFTER THE CHANGE OCCURS. (SEE ACCOMPANYING INSTRUCTIONS).

SSN: ____ - ____ - ____

Page ____ of ____ pages

PART I

QUESTIONS TO BE ANSWERED BY

APPLICANTS FOR A CLASS A OR CLASS B

PHOTO IDENTIFICATION CARD

1. Application for

Class A Photo ID (Loaders/Unloaders)

Class B Photo ID (Wholesalers/SeafoodDeliverers/Others)

2. Name: _____

*2. Name: (Last) (First) (Middle)

3. Have you ever used or been known by any other name, including a maiden name?

__ No __ Yes

3. If "yes," provide the information requested below:

Name Dates Used Reason

*4. Applicant's Social Security Number[1]: _____

5. Date of Birth: _____

5. Date of Birth: (Month) (Day) (Year)

6. Place of Birth: _____

6. Place of Birth: (City) (State) (Country)

[1] Section 1-24 of Subchapter 1-B of Title 66 of the Rules of the City of New York requires that responses to requests for licensing proposals include the social security numbers of the applicant. These social security numbers may be used to locate information concerning the applicant. Refusal to provide these numbers is not a ground for refusal to issue a license.

SSN: ____ - ____ - ____

Page ____ of ____ pages

7. Marital status please check one:

7. Single____ Married____ Separated____ Divorced____ Widowed____

7. If other than single, provide name(s) of any current or former spouse(s), including full maiden name(s) where applicable:

7. _____

8. For the past five years, state your residence address(es) and telephone number(s), including fax, cellular phone and beeper numbers.

Residence Address Telephone Number(s) Dates of Residence

9. Do you have a driver's license? __ No __ Yes

9. If "yes," identify all licenses below:

Drivers License Number Class of License Address on License

10. Do you or your spouse currently have any motor vehicles registered in your name?

__ No __ Yes

10. If your answer is "yes," for each such motor vehicle, state the following:

Make Year License Plate # Address at which Registered

SSN: ____ - ____ - ____

Page ____ of ____ pages

PART II

ADDITIONAL QUESTIONS FOR APPLICANTS FOR CLASS A PHOTO IDENTIFICATION CARD 11. Have you had a driver's license revoked or suspended in the last ten (10) years?

__ No __ Yes

11. If your answer is "yes," provide the information requested below:

Date of Event Jurisdiction Reason

12. Identify below any other residence(s) you currently maintain. If a residence is a weekend or vacation home, please state such. If none, state "None."

Address Telephone Number Purpose of Residence Date Purchased

13. Identify below your places of employment for the past ten years.

Name, Address and Telephone Number of Employer Name and Telephone Number of Supervisor Dates of Employment

SSN: ____ - ____ - ____

Page ____ of ____ pages

14. Have you ever been fired, asked to resign, or terminated for cause by any employer?

__ No __ Yes

14. If so, provide the information requested below:

Employer Date of Action Action Taken Reason

*15. To the best of your knowledge, during the past five years have you:

*15. a. been the subject or target of any investigation involving any alleged violation of criminal law?

__ No __ Yes

*15. b. been the subject or target of any investigation of any other investigation regarding an alleged violation of federal, state or local statute?

__ No __ Yes

*15. c. been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

__ No __ Yes

*15. d. entered a plea of nolo contendere to any felony or misdemeanor charge?

__ No __ Yes

*15. e. entered into a consent decree or been the subject of a default decree?

__ No __ Yes

*15. f. been granted immunity from prosecution for any conduct constituting a crime under state or federal law?

__ No __ Yes

*15. g. had an injunction obtained against you in any judicial action or proceeding?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*15. h. received a subpoena requiring the production of documents in connection with a federal, state or local investigation:

__ No __ Yes

*15. h. If your answer is "yes" to any portion of this question, supply details below.

Agency or Court Nature of Action Person or Entity Involved Date of Investigation, and Date Charges Brought and Resolved Status or Outcome

*16. Have you ever been convicted of any misdemeanor or felony:

__ No __ Yes

*16. If "yes," provide the information requested below:

Date of Arrest Date of Conviction Conviction Charge(s) and Sentence Court and Jurisdiction (County/City)

*17. a. Are there any felony or misdemeanor charges pending against you?

__ No __ Yes

*17. b. Are there any other charges, including, but not limited to, administrative charges by municipal, state or federal agencies, such as the Department of Consumer Affairs, the Department or Board of Health, the Department of Sanitation, the Department of Environmental Protection or the Occupational Safety and Health Administration, presently pending against you?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*17. b. If you answer "yes" to either portion of this question, provide details below. Do not include information relating exclusively to traffic violations.

Agency or Court Nature of the Investigation/Charges Status

*18. To the best of your knowledge, during the past five years have you been the subject of any investigation by a municipal, state or federal agency of any alleged violation of civil law?

__ No __ Yes

*18. If "yes," provide details below.

Agency or Court Nature of the Investigation/Charges Status

*19. During the past ten years have you engaged in any of the following practices:

*19. a. filed with a government agency or submitted to a government employee a written instrument which you knew contained a false statement or false infor- mation?

__ No __ Yes

*19. b. falsified business records?

__ No __ Yes

SSN: ____ - ____ - ____

Page ____ of ____ pages

*17. c. given, or offered to give, money or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official?

__ No __ Yes

*17. d. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*17. e. agreed with another not to submit competitive bids in another's territory established either by geography or customers?

__ No __ Yes

*17. e. If the answer is "yes" to any portion of this question, explain below:

*17. a. _____

*17. a. _____

*17. a. _____

20. Have you ever:

20. a. held a license or permit or been connected with any individual or firm which currently or previously has held a license or permit issued by the Department of Business Services?

__ No __ Yes

20. b. had ANY type of license held by you denied, suspended or revoked?

__ No __ Yes

20. b If your answer is "yes" to either portion of this question, explain below and attach all pertinent documents:

20 b. _____

20. b. _____

20. b. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

21. List below each interest in real property (other than your primary residence) that you or your spouse hold, including, but not limited to, any ownership, leasehold or other direct or indirect interest. If none, state "None."

Address Person or Entity from Whom Acquired Co-Owners Approximate Purchase or Rental Cost Approximate Current Value

22. List below all loans made or notes held by you or your spouse in excess of $5,000 which are currently outstanding. (This refers to monies that people owe to you or your spouse.) If none, state "None."

Name and Address of Debtor Original Amount and Date of Loan Terms of Loan and Security, if Any Balance Outstanding

SSN: ____ - ____ - ____

Page ____ of ____ pages

23. List each creditor to whom either you or your spouse currently are indebted in an amount of $5,000 or more. Debts to be listed include real estate mortgages, car loans and any other secured or unsecured debts or obligations made, guaranteed or co-signed by either you or your spouse. If none, state "None."

Name and Address of Creditor Debtor or Spouse Account No. Amount of Indebtedness Maturity Date Terms of Repayment

24. Identify all persons or entities from whom you or your spouse have received gifts valued at $1,000 or more during the past three years. If none, state "None."

Source of Gift Relationship to Applicant Nature and Amount of Gift Date of Gift

SSN: ____ - ____ - ____

Page ____ of ____ pages

25. Identify all persons or entities to whom you or your spouse have given gifts valued at $1,000 or more during the past three years. If none, state "None."

Recipient Relationship of Recipient to Applicant Nature and Amount of Gift Date of Gift

26. List below any civil judgments entered against you or your spouse in any court which remain unsatisfied, in whole or in part. If none, state "None."

Date and Court in Which Entered Name of Judgment Creditor Original Amount of Judgment Approximate Amount Outstanding

27. Have you filed all required federal, state income tax returns by the due date or within a properly obtained extension period for each of the past three years?

__ No __ Yes

27. If "no," provide the following information:

27. a. The year(s) in which you did not file by the due date or with a properly obtained extension and whether you are referring to Federal or New York State income tax returns, or both.

27. a. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

27. b. Your residence for the year(s) in question;

27. b. _____

27. c. The date(s) when you filed the late return(s);

27. c. _____

27. d. The reason(s) for late or non-filing;

27. d. _____

27. e. Any penalty assessed for the year(s) in question;

27. e. _____

28. Have you paid all federal, state and local income taxes for which you are liable for the three tax years preceding the date this application is submitted?

__ No __ Yes

28. If no, explain why not. (If you are contesting such taxes in a pending judicial or administrative proceeding, please attach the relevant documentation.)

28. _____

28. _____

28. _____

28. _____

SSN: ____ - ____ - ____

Page ____ of ____ pages

29. List below any tax liens entered against you or your spouse by any tax authority. If none, state "None."

Date Entered Name of Tax Authority Original Amount Amount Outstanding

*30.

Do you have a license to carry a firearm? __ No __ Yes

*30. If "yes," provide the information requested below:

Issuing Body Permit Number Date of Issuance and Expiration

*31. Have you ever been refused a bond or surety?

__ No __ Yes

*31. If "YES," provide the information requested below:

Agency Date Reason

SSN: ____ - ____ - ____

Page ____ of ____ pages

CERTIFICATION

This certification must be completed before a notary public by the Applicant. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT KNOWINGLY OR INTENTIONALLY MADE IN CONNECTION WITH THIS APPLICATION MAY RESULT IN FORFEITURE OF ANY PHOTO IDENTIFICATION CARD GRANTED TO YOU AND, IN ADDITION, MAY SUBJECT YOU TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing _____ pages of this application, including _____ pages, which I have appended thereto; that I have supplied full and complete information in answer to each item therein to the best of my knowledge, information and belief; and that all the information supplied by me is full, complete and truthful.

I acknowledge that the New York City Department of Business Services and the New York City Department of Investigation may, by means it deems appropriate, determine the accuracy and truth of the statements made in this application.

I recognize that all the information submitted is for the express purpose of inducing the Department of Business Services to issue to me either a Class A or a Class B photo identification card.

I authorize the Department of Business Services and the Department of Investigation to contact any person or entity named in the application for purposes of verifying the information supplied by me.

Signature of Applicant

Sworn to before me

this ____ day of _____, 19 ____.

Notary Public

SSN: ____ - ____ - ____

Page ____ of ____ pages

HISTORICAL NOTE

Appendix A added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

78 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 1 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX B APPLICATION FOR A LOADING OR UNLOADING LICENSE OR REGISTRATION AS A WHOLESALER OR SEAFOOD DELIVERER

APPENDIX B APPLICATION FOR A LOADING OR UNLOADING LICENSE OR REGISTRATION AS A WHOLESALER OR SEAFOOD DELIVERER

THE CITY OF NEW YORK

DEPARTMENT OF BUSINESS SERVICES

110 WILLIAM STREET

NEW YORK, NEW YORK 10038

Application for a Loading or Unloading License or

Registration as a Wholesaler or Seafood Deliverer

----------OFFICE USE ONLY----------

Application #: _____ Date Received: _____

Approved: _____ Date: _____ Initials: _____ Denied: _____ Date: _____ Initials: _____ Registration or License #: _____ Date Issued: _____

PLEASE READ THE INSTRUCTIONS ACCOMPANYING THIS APPLICATION CAREFULLY BEFORE COMPLETING IT. APPLICATIONS WHICH HAVE NOT BEEN COMPLETED PROPERLY WILL BE RETURNED TO THE APPLICANT WITHOUT BEING PROCESSED.

APPLICANTS SEEKING TO REGISTER AS A WHOLESALER OR SEAFOOD DISTRIBUTOR MUST ANSWER ALL QUESTIONS IN PART I OF THIS APPLICATION.

APPLICANTS SEEKING A LOADING OR UNLOADING LICENSE MUST ANSWER ALL QUESTIONS IN BOTH PART I AND PART II OF THIS APPLICATION.

PLEASE NOTE THAT THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES ("COMMISSIONER") MAY, IN CERTAIN CIRCUMSTANCES, REQUIRE A WHOLESALER OR SEAFOOD DELIVERER TO COMPLETE BOTH PARTS OF THIS APPLICATION.

APPLICANTS REQUIRING ADDITIONAL SPACE TO COMPLETE ANY ANSWER MAY ATTACH ADDITIONAL PAGES TO THIS APPLICATION. EACH PAGE MUST CONTAIN IN THE LOWER LEFT HAND CORNER THE APPLICANT'S SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER AND MUST BE NUMBERED SEQUENTIALLY AS "Page _____ of _____ pages."

ANY CHANGES IN THE INFORMATION RESPONSIVE TO QUESTIONS MARKED WITH AN ASTERISK (*) MUST BE BROUGHT TO THE ATTENTION OF THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS SERVICES, IN WRITING, WITHIN 10 DAYS AFTER THE CHANGE OCCURS. (SEE ACCOMPANYING INSTRUCTIONS).

Tax ID or SSN: _____

Page ____ of ____ pages

PART I

QUESTIONS TO BE ANSWERED

BY ALL APPLICANTS

1. Application for:

1. a. Loading License ____

1. b. Unloading License ____

1. c. Registration as Wholesaler ____

1. d. Registration as Seafood Deliverer ____

*2. Name of Applicant: _____

*3. Applicant's Business Address: _____

*3. _____

4. a. If Applicant is applying for registration as a wholesaler or seafood deliverer, does Applicant wish to be considered for a stand permit?

__ No __ Yes

4. b. If Applicant seeks a stand permit, describe the location, dimensions and proposed use of the stand:

4. _____

4. _____

4. _____

*5. Any other Office Address(es) of Applicant: _____

*5. _____

*5. _____

*6. Mailing Address(es) of Applicant: _____

*6. _____

Tax ID or SSN: _____

Page ____ of ____ pages

7. Name and address of person of suitable age and discretion who shall be designated as Applicant's agent for service of process:

7. _____

7. _____

*8. Telephone Number(s) of Applicant, including all cellular, fax and beeper phone number(s): _____

*8. _____

*8. _____

*9. Form of Organization (check one):

*9. a. _____ Sole proprietorship (i.e., company is not incorporated and does business under the name of a person having ownership interest)

*9. a. i. Home and any other residence address(es) of principal:

*9. a. _____

*9. a. _____

*9. a. ii. Residence Phone Number(s): _____

*9. a. _____

*9. a. _____

*9. a. iii. Residence Fax, Cellular Phone and Beeper Number(s):

*9. a. _____

*9. a. _____

*9. b. _____ Partnership (Check one and attach copy of current partnership agreement and certificate of partnership, certified by the County Clerk).

*9. b. _____ General

*9. b. _____ Limited

*9. b. _____ Limited Liability

Tax ID or SSN: _____

Page ____ of ____ pages

*9. b. i. State where and when certificate of partnership was filed:

*9. b. _____

*9. c. _____ Corporation (Attach a copy of certificate of incorporation and current by-laws):

*9. c. i.i State of Incorporation: _____

*9. c. ii. Date of Incorporation: _____

*9. d. _____ Other:

*9. d. i. Describe the Applicant's form of organization:

*9. d. _____

*9. d. _____

*9. d. _____

*9. d. _____

*10. Applicant's Tax Identification Number(s) and/or, for sole proprietorship, principal's social security number(s):1

*10. _____

11. Other names used by Applicant during last ten years, including, but not limited to, trade names (D/B/As) and aliases. If none, state "None."

11. _____

11. _____

11. _____

11. (Attach copies of current Certificate(s) of Assumed Name, certified by the County Clerk).

[1] Section 1-24 of Subchapter 1-B of Title 66 of the Rules of the City of New York requires that responses to requests for licensing proposals include the social security numbers of the applicant. These social security numbers may be used to locate information concerning the applicant. Refusal to provide these numbers is not a ground for refusal to issue a license.

Tax ID or SSN: _____

Page ____ of ____ pages

12. Was Applicant purchased as an existing business by its present owner(s)?

12. __ No __ Yes (If yes, provide information below)

12. a. DATE PURCHASED: __ __ / __ __ / __ __

12. b. SELLER(S) NAME(S):

12. b. _____

12. b. _____

12. c. NAME(S) USED BY SELLER(S) WHEN SELLER(S) OPERATED BUSINESS:
_____

*13. Does the Applicant share office space, staff, or equipment (including, but not limited to, telephone lines) with any other business or organization?

__ No __ Yes

*13. If "yes," provide details:

Tax ID No. of Other Business or Organization Name of Other Business or Organization Principals of Other Business or Organization[2] Nature of Shared Facilities

14. a. Has the Applicant changed address(es) in the past five years?

__ No __ Yes

[2] The principals of a business or organization include:

a) in the case of a sole proprietorship, the proprietor;

b) in the case of a partnership, all the partners;

c) in the case of a corporation, every officer, director and/or shareholder holding 10% or more of its outstanding shares; and

d) in the case of any other business entity, all persons participating directly or indirectly in the control of the entity.

For purposes of determining who is the principal of a business or organization:

a) an individual shall be considered to hold stock in a corporation when the stock is owned directly or indirectly by

or for (i) the spouse of such individual (other than a spouse who is legally separated from the individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (ii) the children, grandchildren and parents of such individual, (iii) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (iv) a corporation in which such individual owns 50% or more in value of the stock; b) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly by or for a partner in such partnership; and c) a corporation shall be considered to hold stock in a corporation where such corporation holds 50% or more in value of the stock of a third corporation that holds stock in the corporation under consideration.

Tax ID or SSN: _____

Page ____ of ____ pages

14. b. Has the Applicant operated under any other name(s) in the past five years?

__ No __ Yes

14. b. If the answer to either portion of this question is "yes," provide details below.

Name Address From (Mo./Yr.) To (Mo./Yr.)

15. If the Applicant conducts business in any form other than as a sole proprietorship, identify all principals[3] of Applicant for the past ten years on the attached Schedule A:

[3] The principals of an Applicant include:

a) in the case of a partnership, all the partners;

b) in the case of a corporation, every officer, director and/or stockholder holding 10% or more of its outstanding shares; and

c) in the case of any other business entity, all persons participating directly or indirectly in the control of the entity.

When a partner or a stockholder holding 10% or more of the outstanding shares of a corporation is itself a partnership or a corporation, the "principals" of the corporation also include the partners of such partnership or the officers, directors and stockholders holding 10% or more of the outstanding shares of such corporation.

For purposes of determining who is the principal of an Applicant:

(a) an individual shall be considered to hold stock in a corporation when the stock is owned directly or indirectly by or for (i) the spouse of such individual (other than a spouse who is legally separated from the individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (ii) the children, grandchildren and parents of such individual, (iii) a partnership in which such individual is a partner, in proportion to the partnership interest of such individual, and (iv) a corporation in which such individual owns 50% or more in value of the stock; b) a partnership shall be considered to own stock in a corporation where such stock is owned, directly or indirectly by or for a partner in such partnership; and c) a corporation shall be considered to hold stock in a corporation that is an applicant where such corporation holds 50% or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Tax ID or SSN: _____

Page ____ of ____ pages

*16. Identify any other persons having a beneficial interest in the Applicant. If none, state "None."

Name Person #1 Person #2 Person #3 Person #4

HomeAddress(es)and PhoneNumber(s)

BusinessAddress(es)and PhoneNumber(s)

Nature ofInterest

WhenInterest WasAcquiredand FromWhom

17. How many individuals (not including principals of the Applicant) does Applicant currently employ. If none, state "None."

_____

Tax ID or SSN: _____

Page ____ of ____ pages

*18. At present or during the past five years has the Applicant or any principal of the Applicant listed in this application served as a principal or owned 10% or more of any other business (whether currently active or not) other than the securities of a publicly traded company? 4

__ No __ Yes

*18. If "yes," provide details below:

Name of Principal or Applicant Tax ID # of Other Business Name and Address of Other Business Position Held % Owned

*19. To the best of the Applicant's knowledge, during the past five years has the Applicant or any current or past principal of the Applicant listed in this application:

*19. a. been the subject or target of any investigation involving any alleged violation of criminal law?

__ No __ Yes

*19. b. been the subject or target of any investigation of any other investigation regarding an alleged violation of federal, state or local statute?

__ No __ Yes

*19. c. been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

__ No __ Yes

*19. d. entered a plea of **nolo contendere to any felony or misdemeanor charge?**

__ No __ Yes

*19. e. entered into a consent decree or been the subject of a default decree?

__ No __ Yes

[4] See footnotes 2 and 3 for the definition of the terms "principal" and "principal of applicant."

Tax ID or SSN: _____

Page ____ of ____ pages

*19. f. been granted immunity from prosecution for any conduct constituting a crime under state or federal law?

__ No __ Yes

*19. g. had an injunction obtained against it in any judicial action or proceeding?

__ No __ Yes

*19. h. received a subpoena requiring the production of documents in connection with a federal, state or local investigation:

__ No __ Yes

*19. h. If the answer to either portion of this question is "yes," supply details below:

Agency or Court Nature of Action Person or Entity Involved Date of Investigation, and Date Charges Brought and Resolved Status or Outcome

Tax ID or SSN: _____

Page ____ of ____ pages

*20. Has the Applicant or any current or past principal of the Applicant listed in this application ever been convicted of any misdemeanor or felony?

__ No __ Yes

*20. If "yes," provide the information requested below:

Date of Arrest Date of Conviction Conviction Charge(s) and Sentence Court and Jurisdiction (County/City)

*21. a. Are there any felony or misdemeanor charges pending against the Applicant or any current or past principal of the Applicant listed in this application?

__ No __ Yes

*21. b. Are there any other charges, including, but not limited to, administrative charges by municipal, state or federal agencies, such as the Department of Consumer Affairs, the Department or Board of Health, the Department of Sanitation, the Department of Environmental Protection or the Occupational Safety and Health Administration, presently pending against the Applicant or any current or past principal of the Applicant listed in this application?

__ No __ Yes

Tax ID or SSN: _____

Page ____ of ____ pages

*21. b. If "yes," provide details below. Do not include information relating exclusively to traffic violations.

Agency or Court Nature of the Investigation/Charges Status

*22. To the best of the Applicant's knowledge, during the past five years has the Applicant or any current or past principal of the Applicant listed in this application been the subject of any investigation by a municipal, state or federal agency of any alleged violation of civil law?

__ No __ Yes

*22. If "yes," provide details below.

Agency or Court Nature of the Investigation/Charges Status

Tax ID or SSN: _____

Page ____ of ____ pages

*23. To the best of the Applicant's knowledge, during the past ten years has the Applicant or any current or past principal of the Applicant listed in this application engaged in any of the following practices:

*23. a. filed with a government agency or submitted to a government employee a written instrument which the Applicant or any of its principals knew contained a false statement or false information?

__ No __ Yes

*23. b. falsified business records?

__ No __ Yes

*23. c. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*23. d. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

__ No __ Yes

*23. e. agreed with another not to submit competitive bids in another's territory established either by geography or customers?

__ No __ Yes

*23. e. If the answer is "yes" to any portion of this question, explain below:

*17. a. _____

*17. a. _____

*17. a. _____

24. Has any individual or firm whose name appears on this application ever:

24. a. held a license or permit or been connected with any individual or firm which currently or previously has held

a license or permit issued by the Department of Business Services?

__ No __ Yes

Tax ID or SSN: _____

Page ____ of ____ pages

24. b. had ANY type of license held by the Applicant or any of its principals denied, suspended or revoked?

__ No __ Yes

24. b If the answer to either portion of this question is "yes," explain below and attach all pertinent documents:

20. b. _____

20. b. _____

20. b. _____

20. b. _____

*25. List the names, residence addresses, phone numbers, dates of birth, positions, planned work hours per day and social security numbers of all employees Applicant presently believes will be employed by the Applicant in its business:

(Print) Last Name, First Residence Address DOB Phone # Position Hrs. Worked Per Week SSN

Tax ID or SSN: _____

Page ____ of ____ pages

*26. For each employee who will operate a vehicle during the conduct of the Applicant's business, provide the operator's name, driver's license number(s), class(es), and expiration date(s).

(Print) Last Name, First Drivers License Numbers Class(es) Exp. Date(s)

Tax ID or SSN: _____

Page ____ of ____ pages

*27. List vehicle identification numbers, registration numbers and license plate numbers for all vehicles, including, but not limited to, "hi-los," which will be used during the conduct of Applicant's business. If none, state "None."

Type of Vehicle Manufacturer and Year of Manufacture VIN Number Registration Number License Plate Number

Tax ID or SSN: _____

Page ____ of ____ pages

PART II

ADDITIONAL QUESTIONS TO BE COMPLETED BY APPLICANTS FOR A LOADING OR UNLOADING LICENSE *28. For each financial account used by the Applicant during the past five years, including, but not limited to, accounts maintained at banks, credit unions, brokerage firms or other financial institutions, provide the following:

Type of Account Name/Address of Institution Account No. Name/Phone No. of Account Officer Names and Addresses of All Persons Authorized to Sign on Behalf of the Applicant

29. List below each direct or indirect interest in real property (other than a primary residence) held by Applicant. If none, state "None."

Address Person or Entity from Whom Acquired Co-Owners Approximate Purchase or Rental Cost Approximate Current Value

Tax ID or SSN: _____

Page ____ of ____ pages

30. List below all loans made or notes held by Applicant in excess of $5,000 which are currently outstanding. (This refers to monies that are owed to the Applicant.) If none, state "None."

Name and Address of Debtor Original Amount and Date of Loan Terms of Loan and Security, if Any Approximate Balance Outstanding

31. Does the Applicant or do any principals of the Applicant listed in this application have any indebtedness, including, but not limited to, loans, lines of credit and mortgages on real property (other than a primary residence), in excess of $5,000?

__ No __ Yes

31. If "yes," provide details below:

Name and Address of Creditor Account No. Amount of Indebtedness Maturity Date Terms of Repayment Name and Phone # of Loan Officer

Tax ID or SSN: _____

Page ____ of ____ pages

*32. Has the Applicant filed all required tax returns (including, but not limited to, income and business, unincorporated business, commercial rent, and unemployment insurance returns) by the due date or within a properly obtained extension period for each of the past three years?

__ No __ Yes

*32. If "no," provide the following information:

*32. a. the year(s) in which the Applicant did not file by the due date or with a properly obtained extension, the type of return involved, and, where applicable, whether the delayed filing relates to Federal or New York State tax returns, or both.

*32. a. _____

*32. a. _____

*32. a. _____

*32. b. Applicant's residence during the year(s) in question;

*32. b. _____

*32. c. The date(s) when Applicant filed the late return(s);

*32. c. _____

*32. d. The reason(s) for the late or non-filing;

*32. d. _____

*32. e. **Any** penalty assessed for the year(s) in question;

*32. e. _____

33. Has the Applicant paid all federal, state and local income taxes for which the Applicant is liable for the three tax years preceding the date this application is submitted?

__ No __ Yes

33. If no, explain why not. (If Applicant is contesting such taxes in a pending judicial or administrative proceeding, please attach the relevant documentation.)

33. _____

33. _____

33. _____

33. _____

Tax ID or SSN: _____

Page ____ of ____ pages

34. List below any tax liens entered against the Applicant by any tax authority. If none, state "None."

Date Entered Name of Tax Authority Original Amount Amount Outstanding

*35. State below any monies currently owed by the Applicant to tax authorities other than those tax debts for which liens have been entered against the Applicant. Indicate the status of the matter (e.g., the date by which Applicant will make payment, whether the tax authorities have instituted proceedings against the Applicant, etc.). If none, state "None."

Date Name of Tax Authority Amount Status

Tax ID or SSN: _____

Page ____ of ____ pages

*36. During the past ten years, has the Applicant or any of its predecessors in interest been a party to a bankruptcy or reorganization proceeding?

__ No __ Yes

*36. If "yes," provide details below.

Caption Date Docket # Court County Status

37. Identify all persons or entities from whom the Applicant has received gifts valued at $1,000 or more during the past three years. If none, state "None."

Source of Gift Relationship to Applicant Nature and Amount of Gift Date of Gift

38. Identify all persons or entities to which Applicant has given gifts valued at $1,000 or more during the past three years. If none, state "None."

Recipient Relationship of Recipient to Applicant Nature and Amount of Gift Date of Gift

Tax ID or SSN: _____

Page ____ of ____ pages

SCHEDULE A-PRINCIPALS

OF APPLICANT

Principal #1 Principal #2 Principal #3 Principal #4

Name & HomeAddress(es)

HomeTelephoneNumbers

FAXNumber(s)

Date of Birth

SocialSecurityNumber(s)

BusinessAddress(es)

BusinessTelephoneNumbers

Title(s)

From (Date)

To (Date)

% OfOwnership

Number ofShares

How OwnershipInterest WasAcquired

Tax ID or SSN: _____

Page ____ of ____ pages

CERTIFICATION

This certification must be completed before a notary public by the Applicant and each current principal of the

Applicant. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT KNOWINGLY OR INTENTIONALLY MADE IN CONNECTION WITH THE APPLICATION MAY RESULT IN FORFEITURE OF ANY PHOTO IDENTIFICATION CARD GRANTED TO YOU AND, IN ADDITION, MAY SUBJECT YOU TO CRIMINAL CHARGES.

I, _____ (full name), being duly sworn, state that I am _____ (title) of _____ (Applicant), and that I have read and understand the questions contained in the attached application and its attachments, which consists of _____ pages.

I certify that to the best of my knowledge the information given in response to each question and in the attachments is full, complete and truthful.

I acknowledge that the New York City Department of Business Services and the New York City Department of Investigation may, by means it deems appropriate, determine the accuracy and truth of the statements made in this application.

I recognize that all the information submitted is for the express purpose of inducing the Department of Business Services to issue to me either a Class A or a Class B photo identification card.

I authorize the Department of Business Services and the Department of Investigation to contact any person or entity named in the application for purposes of verifying the information supplied by me.

(Signature of Applicant)

Sworn to me

this ____ day of _____, 19 ____.

Notary Public

Tax ID or SSN: _____

Page ____ of ____ pages

HISTORICAL NOTE

Appendix B added City Record July 31, 1995 eff. Aug. 30, 1995. [See Subchapter B footnote]

Rules of the City of New York

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

66 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-01 Definitions.

The following definitions are applicable to this chapter:

Barge. "Barge" means any vessel or other craft without propulsion power and designed chiefly for present use to transport cargo of any sort. A barge may or may not have a superstructure.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Converted craft. "Converted craft" means any barge, vessel, houseboat or other craft, that is used or is designed for use as a theater, repair shop, for recreation, a residence, restaurant, studio, museum, training school, club, storage area or commercial business, or for any non-maritime activity.

Debris. "Debris" means any substance or material, whether on land or water, which is liable to become drift.

Discharge. "Discharge" means any spilling, leaking, dumping, pouring, emitting or emptying of drift or debris.

Drift. "Drift" means any substance or material, floatable or otherwise- including, but not limited to oil, sludge and oil refuse, gasoline, gas, offal, piles, lumber, timber, driftwood, dirt, ashes, cinders, mud, sand, dredged material, acid, chemicals, or any refuse-which may cause damage to any vessel or craft or which may obstruct the waters of the port of The City of New York, or which may be a hazard to any person, property or marine life.

Furtherance of navigation. "Furtherance of navigation" means the activity on waterfront property which involves ship building, ship repairing, boating, dry-dock facilities and similar uses.

Houseboat. "Houseboat" means any vessel or other craft with or without propulsion power and having a superstructure or substructure designed to be used principally for residential purposes. A houseboat may or may not have toilet, cooking, heating, lighting and/or bathing facilities.

Marginal street. "Marginal street" means any street, road, place, area or way adjoining or adjacent to any waterfront property and designated as a marginal street, wharf or place on a plan or map adopted pursuant to law.

Person. "Person" means any individual, party, trustee, firm, partnership, corporation, joint stock association, company, society, government agency, public authority, or other entity.

The port of the City of New York. "The port of the City of New York" shall include all the waters of the North River, the East River and the Harlem River, and all the tidal waters embraced within or adjacent to or opposite the shores of The City of New York.

Waterfront commerce. "Waterfront commerce" means the activity on waterfront property which encompasses the receipt of cargo or goods at the wharves, piers, docks or bulkheads from ships and their delivery to points inland, or the receipt of such cargo or goods at such wharves, piers, docks or bulkheads from points inland for shipment by ships, and shall include the temporary storage of such cargo or goods in the sheds or warehouses on such property pending their delivery or shipment.

Waterfront property. "Waterfront property" means all property whether owned by The City of New York or privately owned, fronting on all the tidal waters in the port of The City of New York and including all upland extending inshore to the property line of the first adverse owner and shall include such land under water extending outshore to the pierhead line or the property line, whichever extends furthest outshore. This term includes all property defined as "wharf property" below.

Wharf property. "Wharf property" means wharves, piers, docks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of The City of New York, and such upland or made land adjacent thereto owned by The City of New York as is vested in or may be assigned to the Department of Ports and Trade.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-02 Use and Occupancy of Property Subject to Commissioner's Permission.

No person shall use or occupy any wharf property or any marginal street for any commercial enterprise, soliciting, recreation, peddling, drag racing, selling or offering for sale services, merchandise or commodities of any kind, or the holding of any public meeting, without the prior written permission of the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-03 Improvement and Alteration of Property and Marginal Streets.

(a) No person shall erect, place or maintain any building, platform, sign, advertising device or any construction or obstacle of any kind on or about any wharf property or marginal street without first obtaining a written permit from the Commissioner. Such a permit shall also be required for the erection, placing or maintaining any of such signs, structures or devices on any waterfront property when such signs, structures or devices are used in conjunction with, or in furtherance of, waterfront commerce and/or navigation.

(b) No person shall drive any piles or fill in or make any removal, dredging or demolitions of any kind on or about any waterfront property or marginal street without first obtaining a written permit from the Commissioner.

(c) No person unless otherwise authorized by law shall make any repairs, installations or alterations upon, make any opening in, or close any opening in a marginal street for any purpose without first obtaining a written permit from the Commissioner.

(d) Whenever there is any construction, alteration or demolition in progress for which a permit is required by this chapter or otherwise, a permit card bearing the permit number, plan number, description of work, and the location of the premises for which issued, shall be posted in a conspicuous location on the exterior of the structure or premises where the work is in progress so as to be visible for public inspection. Any permit card relating to any work on or about any marginal street shall be posted in a conspicuous location within a reasonable distance of the construction area so as to be visible for public inspection.

(e) No person shall display a permit card at any location or for any work other than that for which said permit card

was issued.

(f) Any permit may be suspended or revoked upon expiration of any workman's compensation or other required insurance, or at the discretion of the Commissioner. A permit shall normally be revoked whenever the Commissioner shall have determined that an unreasonable delay has occurred in the completion of the work authorized by such permit.

(g) Any permit issued by the Commissioner under which no work has begun within one year from the date thereof shall be revoked unless otherwise directed by the Commissioner. Whenever a permit is revoked for any reason, no work for which a permit is required by this §2-03 shall proceed unless any application for a new permit shall have been approved and a new permit issued.

(h) Any application for a permit which has been disapproved entirely or in part and upon which no further action has been taken by the applicant within one year after the notice of disapproval was given shall be cancelled unless otherwise directed by the Commissioner. An application once so cancelled may be reinstated at the discretion of the Commissioner, provided such application complies with all provisions of the law in effect at the time reinstatement is granted.

(i) No person shall perform any work pursuant to a permit without complying with all conditions of the permit and without obtaining, in a form satisfactory to the Commissioner, the authorization and approval of any other governmental agencies concerned, as specified in the permit.

(j) No person shall use or occupy any structure, land, fill area, facility, or any area on or about waterfront property where work has been done or is underway, for which a permit is required, unless a certificate or letter of completion is issued by the Commissioner, or unless otherwise authorized in writing by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-04 Maintenance, Repair, Reconstruction or Demolition and Removal of Privately Owned Waterfront Property and Deepening of Adjoining Water.

(a) No person owning, leasing, using or occupying any marginal street or waterfront property, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall knowingly maintain all or any portion thereof in an unsafe condition, or not in good repair, or in a condition which impedes or endangers any person or property. No person owning, leasing, using or occupying any other structure in the port of the City of New York used in conjunction with and in furtherance of waterfront commerce and/or navigation shall knowingly maintain all or any portion of the same in an unsafe condition, or not in good repair, or in a condition which impedes or endangers any person or property.

(b) Any person owning, leasing, using or occupying any waterfront property or marginal street, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall comply forthwith with all orders of the Commissioner to repair, reconstruct, maintain, fill in, demolish or remove all or any part of such property or anything therein or thereon to correct any condition determined by the Commissioner to be unsafe or not in good repair, or which impedes or endangers any person or property. Any person owning, leasing, using or occupying any other structure in the port of The City of New York used in conjunction with and in furtherance of waterfront commerce and/or navigation shall comply forthwith with all orders of the Commissioner to repair, reconstruct, maintain, fill in, demolish or remove all or any part of such structure or anything therein, to correct any condition determined by the Commissioner to be unsafe, or not in good repair, or which impedes or endangers any person or property.

(c) Any person owning, leasing, using or occupying waterfront property, or any wharves, piers, docks, bulkheads or structures wholly or partly thereon, shall comply forthwith with all orders of the Commissioner directing that the water near or adjoining such property be deepened, or that obstacles in the water be removed, by excavating or

removing such obstacles or earth, mud, dirt or sand therefrom in such places, quantities and at such times as the Commissioner may determine as necessary to insure safety to any person or property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-05 Dumping, Polluting or Obstructing Waters.

(a) No person shall dump snow or ice into the waters of the port of The City of New York, except at places designated in writing by the Commissioner.

(b) No person shall place, discharge or deposit by any process or in any manner on or about any waterfront property, marginal street or the waters of the port of The City of New York any drift or debris, except under the supervision of the United States Supervisor of the Harbor and with the prior written permission of the Commissioner.

(c) No person shall discharge or permit to be discharged into the port of The City of New York from any ship, steamer, vessel or craft, any drift or debris except at places and using devices authorized by law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-06 Obstructing Waterfront Property.

(a) No person shall impede, encumber or obstruct in any manner the free access to, egress from, or use of any wharf property or marginal street with any merchandise, cargo, goods, refuse or other material, or with a vehicle or vessel of any type.

(b) Any person owning, chartering, operating, occupying or using any vessel, craft, barge, ship, floating structure or aircraft that sinks or is in danger of sinking or stranding on or about any waterfront property shall remove the same, together with any cargo, without delay.

(c) Whenever any waterfront property or marginal street shall be encumbered or obstructed in its free use or for navigation by merchandise or material not affixed to such waterfront property or marginal street, or by any automobile, wagon, truck or cart, or by any floating, stranded or sunken vessel or craft, and the owner, consignee or person in charge thereof shall fail to remove the same when directed by an order issued by the Commissioner, the Commissioner may employ such labor and equipment as may be necessary to carry out such order. The Commissioner may store such merchandise, material, automobile, wagon, truck, cart, vessel or craft in a warehouse or other suitable place at the expense of the owner. Such owner, consignee, or person in charge of the merchandise, material, or automobile, wagon, truck, cart, vessel or craft so removed or stored may redeem the same upon payment to the Commissioner of the amount of all expenses actually and necessarily incurred in effecting such removal together with any charges for storage, pursuant to §22-109 of the Administrative Code.

(d) No person shall place any vessel, craft or structure which is sinking, or is in such condition that there is a danger of it sinking or stranding, at any waterfront property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-07 Loading and Storage in Area Adjacent to Bulkhead.

No person shall load, unload, place, store or keep any cargo, goods, merchandise, materials, vehicles or equipment upon any waterfront property or marginal street except at places designated in writing by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-08 Overloading.

No person shall move, transport, load, unload, place, store or keep any vehicle, equipment, cargo, goods, merchandise or material upon any waterfront property or marginal street in excess of the load limit fixed for such waterfront property or marginal street by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-09 Time Limit for Goods on Wharf Property.

(a) No person occupying, leasing or using any wharf property or marginal street shall place, store or keep any cargo, goods, merchandise or material of any kind upon such property for more than ten (10) days, except with the prior written permission of the Commissioner.

(b) No person shall place, store or keep any cargo, goods, merchandise or material of any kind upon wharf property set aside by the Commissioner for general wharfage purposes for more than twenty-four (24) hours from the time it was loaded, unloaded, placed, stored or kept, except with the prior written permission of the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-10 Parking or Storing of Vehicles on Marginal Streets or Wharf Property.

(a) No person shall park, place, store or keep any motor vehicle, truck, cart, wagon, cargo, container, trailer or vehicle of any type on or about any marginal street or wharf property, except at places designated in writing by the Commissioner.

(b) The New York State vehicle and traffic law and the traffic rules and regulations of the City Department of Transportation are hereby established as rules and regulations of the Commissioner as though set forth herein in full, and shall be in effect on wharf property and on marginal streets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-11 Hazardous, Flammable or Explosive Substances.

(a) No person shall load, unload, discharge, place, store or keep any material, fluid, gas or substance of any explosive, flammable, radioactive or hazardous nature upon any waterfront property or marginal street, except at locations designated in writing by the Commissioner, and upon complying with applicable rules and regulations of the United States Coast Guard, the Fire Department and the Department of Health of The City of New York, or any other Federal, State or City agency.

(b) No person shall drain, remove or discharge gasoline, oil or any explosive, flammable or hazardous liquid, gas or substance from any vehicle upon any waterfront property or marginal street, except at locations designated in writing by the Commissioner and upon complying with applicable rules and regulations of the United States Coast Guard, Fire Department and the Department of Health of The City of New York, or of any other Federal, State or City agency.

(c) No person shall load, unload, place, store or keep upon any waterfront property or marginal street any vehicle which is in the course of shipment containing gasoline or other flammable material unless the Commissioner and the Fire Commissioner of The City of New York grant prior written permission.

(d) No person shall load, unload, discharge, place, store or keep sisal, jute, hemp, flax, coir, kapok or any similar vegetable or synthetic fiber upon any waterfront property or marginal street without giving advance notice in writing thereof to the Commissioner and without complying with the rules and regulations of the United States Coast Guard and the Fire Department of The City of New York.

(e) All persons shall comply forthwith with all orders of the Commissioner concerning the loading, unloading,

discharge, placing, storing or keeping of the hazardous, radioactive or flammable materials, fluids, gases, or substances mentioned in this section.

(f) No person shall load, unload, discharge, place, store or keep sisal, jute, hemp, flax, coir, kapok or any similar vegetable or synthetic fiber upon any waterfront property unless the shed or superstructure is equipped with an automatic sprinkler system approved by the Commissioner and the Fire Commissioner and the substructure is protected according to the rules and regulations of the Fire Department of The City of New York.

(g) Any person who is the owner, lessee or user of any equipment fueled by liquified petroleum gas or gasoline, and used to handle sisal, jute, hemp, flax, coir, kapok or similar vegetable or synthetic fiber, shall equip such equipment with exhaust spark arrestors and carburetor traps.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-12 Berthing and Moving of Vessels.

(a) No person shall tie, anchor, or make fast any vessel, barge, ship, aircraft or floating structure at or about any wharf property or marginal street without the prior written permission of the Commissioner.

(b) Any person who is the owner, operator, master, charterer or person in charge of any vessel, barge, ship, aircraft or floating structure tied, anchored or made fast at or about any wharf property or marginal street shall move the same forthwith when so ordered by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-13 Wharfage and Other Fees and Charges.

No person shall fail or refuse to pay upon demand to the Commissioner the rates established by the Commissioner for wharfage, cranage or dockage.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-14 Taxicabs and Porters.

(a) Any person who is a permittee, lessee, licensee, user or occupant of any wharf property or marginal street shall accord equal rights and privileges in the use of such property to all duly licensed taxicab operators and all duly licensed porters, subject to subdivision (b) of this section.

(b) The Commissioner may prescribe from time to time the terms and conditions upon which taxicabs or similar vehicles may, or may not, utilize or enter wharf property or marginal streets.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-15 Loading or Discharging Passengers.

(a) No passengers shall be taken aboard or discharged from a ship, barge, vessel, craft, floating structure or aircraft at or about any wharf property or marginal street except by prior written permission of the Commissioner.

(b) No passengers shall be taken aboard or discharged from a ship, barge, vessel, craft, aircraft or floating structure at or about any wharf property or marginal street occupied under lease or permit except by permission of such lessee or permittee, and in conformance with such lease or permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-16 Repairs to Vessels or Aircraft; Burning and Welding Equipment.

(a) No person shall make or cause to be made any repairs, except voyage repairs, on or for any vessel, craft, barge, ship, aircraft or floating structure on or about any waterfront property or marginal street without the prior written permission of the Com- missioner.

(b) No person shall use or cause to be used, or place, store or keep on or about any waterfront property or marginal street, or use or cause to be used on any vessel, craft, barge, ship, aircraft or floating structure berthed at or about such property any machinery, equipment or appliance used for welding or burning without the prior written permission of the Commissioner and without complying with the applicable rules and regulations of The United States Coast Guard and the Fire Department of The City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-17 Smoking and Lighted Material.

No person shall smoke, possess or throw away any lighted match, cigar, pipe, cigarette or other lighted material while in or about any structure located on waterfront property (except a private dwelling as defined in §4 of the Multiple Dwelling Law); or while on or about any vessel or other craft which carries as cargo any of the flammable or explosive substances or materials mentioned in §2-11 above, and which is tied, anchored or made fast at or about any waterfront property or marginal street; provided that the Commissioner and/or the Fire Commissioner of The City of New York may in writing from time to time designate portions of any of the aforementioned structures, locations, vessels or crafts where smoking may be permitted and may prescribe the types and locations of containers or receptacles into which such lighted material and such lighted matches, cigars or cigarettes shall be deposited.

HISTORICAL NOTE

Section in original publication July 1, 1991.

96 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 2-18

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-18 Converted Craft and Houseboats.

(a) No person shall tie, anchor or make fast on or about waterfront property, a marginal street or the waters of the port of The City of New York any houseboat or converted craft for any period of time without the prior written permission of the Commissioner. Such written permission shall not be granted without satisfying the Com- missioner that all of the following requirements have been met:

(1) All provisions of the Building Code deemed applicable by the Commissioner shall be complied with. By way of example, and not limitation, such provisions may relate to heating, power, sewage, plumbing public assembly and general construction;

(2) All provisions of laws, rules and regulations of any governmental agency deemed applicable by the Commissioner to insure safety of persons or property shall be complied with. By way of example, and not limitation, such provisions may relate to air or water pollution, construction materials, sewage or waste disposal, sanitation, health, fire, safety, etc.;

(3) All applicable labor laws, rules and regulations shall be complied with, where work is to be performed on or about a houseboat or converted craft;

(4) All fire protection measures and equipment shall be as approved and authorized by the Fire Department of The City of New York;

(5) All provisions for tying, anchoring or making fast such houseboat or converted craft, or for providing

gangplanks, heat or electrical connections, plumbing or any attachments from one houseboat or converted craft to any other vessel or to any point on waterfront property or a marginal street shall be adequate to insure safety to person and property; and

(6) Granting such permission shall be determined by the Commissioner to be consistent with the public interest and not in conflict with any plan or program for waterfront development.

(b) Any written permission granted under this section may be suspended or revoked by the Commissioner at his discretion whenever any of the conditions enumerated in paragraphs one through six of §2-18(a) above, are no longer satisfied, or whenever necessary to insure safety to persons or property.

(c) No person owning, chartering, occupying or using a houseboat or converted craft tied, anchored or made fast on or about waterfront property, a marginal street, or the waters of the port of The City of New York shall knowingly maintain such houseboat or converted craft, or any of its appurtenances or facilities, in an unsafe condition, or not in good repair, or in a condition which may endanger any person, or which impedes, encumbers or obstructs waterfront property or a marginal street in its free use or for navigation. Such persons shall comply forthwith with all orders of the Commissioner or the Fire Department of The City of New York directing that any such conditions be corrected or abated, or that such houseboat or converted craft be removed, pursuant to §2-06, or other applicable provisions of law.

(d) No person shall make any repairs, construction, installations, or alterations on or about any houseboat or converted craft, tied, anchored or made fast on or about waterfront property, a margin street or the waters of the port of The City of New York without first obtaining the written permission of the Commissioner, pursuant to §2-03 above. All such persons shall likewise obtain and exhibit upon demand the Certificate of Completion mentioned in §2-03 above, which is hereby made applicable in all respects to such work on such houseboats and converted crafts.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-19 Hindering or Impeding Inspections.

No person shall hinder or impede any authorized representatives of the commissioner from entering, for the purpose of making an inspection, any waterfront property or marginal street, or any vessel, barge, ship, or other craft tied, anchored, or made fast thereto, or upon the waters of the Port of The City of New York.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 2-20

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-20 Responsibility of Owners, Lessors and Charterers of Vessels and Waterfront Property.

Any owner or lessor of waterfront property or any owner, lessor or charterer of any houseboat, barge, converted craft, vessel, ship or craft, shall be responsible for the acts or omissions of any lessee, licensee, or employee thereon.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 2-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-21 Compliance with Laws, Rules and Regulations.

Any person while on or about any waterfront property or marginal street, or any owner, lessee, permittee, licensee, operator, user or occupant of such property, shall comply with all applicable laws, rules, and regulations of all departments, bureaus, agencies, boards or commissions of the United States of America, the State of New York and The City of New York.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 2-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 2 WATERFRONT AND RELATED PROPERTY

§2-22 Penalties.

Any person violating or failing to comply with any of the foregoing rules and regulations shall be triable pursuant to §704(K) of the New York City Charter before a judge of the Criminal Court of The City of New York and punishable by not more than thirty (30) days imprisonment or by a fine of not less than $100 nor more than $500, or both; or in the case of parking violations, before the Parking Violations Bureau, where required by law. Penalties for violations of these rules shall not be imposed in lieu of, but in addition to those fixed by other applicable provisions of law.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-01 Definitions.

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them as follows:

Aircraft. "Aircraft" shall mean and include any and all contrivances or devices that are used or intended to be used for the navigation of or flight in air or space, including but not limited to airplanes, helicopters, lighter-than-air craft, gliders, seaplanes and amphibians.

Airport. "Airport" shall mean any area of land or water, except John F. Kennedy International Airport and LaGuardia Airport which are under the jurisdiction of the Port Authority of New York and New Jersey, that is used or intended to be used for the landing and takeoff of aircraft, and includes any buildings and facilities.

Applicant. "Applicant" shall mean any individual, entity, party, firm, partnership, co-partnership, corporation, association or company (including any assignee, receiver, trustee or similar representative thereof), society, government agency, public authority, or any state or political subdivision thereof.

Armed Forces. "Armed Forces" shall mean the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States of America including their regular and reserve components and members.

Auto-rotation. "Auto-rotation" shall mean a rotorcraft flight condition in which the lifting rotor is driven entirely by action of the air when the rotorcraft is in motion.

Balloon. "Balloon" shall mean a lighter-than-air aircraft that is not engine driven.

Commissioner. "Commissioner" shall mean the Commissioner of the New York City Department of Business Services or his duly authorized representative.

Department. "Department" shall mean the New York City Department of Business Services.

External load. "External load" shall mean a load that is carried, or extends outside of, the aircraft fuselage.

Fixed base operation. "Fixed base operation" shall mean an operation conducted by a person having the right to furnish services including, but not limited to, storage and/or tiedown of aircraft, repair and/or maintenance of aircraft, aircraft charter, rental and/or lease and the sale of aviation fuels and other petroleum products.

Glider. "Glider" shall mean a heavier-than-air aircraft, that is supported in flight by the dynamic reaction of the air against its lifting surfaces and whose free flight does not depend principally on an engine.

Helicopter. "Helicopter" shall mean a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.

Heliport. "Heliport" shall mean an area of land, water, or structure used, or intended to be used, for the landing and take off of helicopters.

Jet aircraft. "Jet aircraft" shall mean and include any and all craft which are not propeller driven and which accomplish motion entirely as a direct reaction of the thrust of any engine.

Kite. "Kite" shall mean a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces.

Parachute. "Parachute" shall mean a device used or intended to be used to retard the fall of a body or object through the air.

Person. "Person" shall mean any individual, party, trustee, firm, partnership, corporation, joint stock association, company, society, government agency, public authority, or any state or political subdivision thereof.

Rotorcraft. "Rotorcraft" shall mean a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.

Seaplane. "Seaplane" shall mean any aircraft designed to maneuver on water, and shall include amphibious aircraft.

Seaplane base. "Seaplane base" shall mean any waterfront property which provides, or is intended to provide, docking and/or ramp facilities for seaplanes, and shall include any additional appurtenances thereto.

Staging area. "Staging area" shall mean that geographic location which may be used for the storage, assemblage or gathering of any item of equipment which is intended to be lifted by helicopter.

Vehicle. "Vehicle" shall mean and include automobiles, trucks, buses, motorcycles, limited use vehicles, bicycles, horse drawn vehicles and any other device in or upon which any person or property is or may be transported, carried or drawn upon land, except aircraft.

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Rules of the City of New York

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

66 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-02 Use and Occupancy of Airports, Aircraft Landing Sites, Seaplane Bases, Heliports and Marginal Streets.

Use or occupancy, for any purpose, including the conduct, operation or maintenance of any commercial business, soliciting, peddling, selling or offering for sale merchandise or commodities of any kind, or services, or the holding of any public meeting, on any airport, aircraft landing site, seaplane base, heliport, or marginal street, owned by the City of New York is prohibited except by written permission of the Commissioner.

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Rules of the City of New York

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

66 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-03 Smoking.

Smoking, possessing or throwing away lighted material or tobacco is prohibited. No person shall smoke, possess or throw away any lighted material or a lighted match, cigar or cigarette while in or upon any airport, aircraft landing site, seaplane base, or heliport or any building or appurtenance thereto, whether owned by the City of New York or privately owned, or while on board any aircraft berthed, moored or located at any such airport, aircraft landing site, seaplane base or heliport; except that the Commissioner and the Fire Commissioner of the City of New York may designate portions of any of the aforementioned structures or locations where smoking may be permitted and may prescribe the types and locations of containers or receptacles into which lighted material and a lighted match, cigar or cigarette shall be deposited.

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Rules of the City of New York

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

66 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-04 Airports.

(a) No airport located within the limits of the City of New York, whether for public or private use, shall be maintained or operated unless the owner or operator shall have procured from the Department a license or permit allowing such maintenance and operation.

(b) Any person seeking to maintain or operate an airport shall file an application with the Department at its office, 110 William Street, 3rd floor, New York, N.Y. 10038. Such application shall be in writing and sworn to by or on behalf of the owner or operator.

(c) The application shall be subject to investigation and report by the Director of Aviation of the Department.

(d) The application for a license or permit must show:

(1) The elevation, location, dimensions and exterior boundaries of the proposed airport, the location, dimensions and height of any and all structures or vertical projections above the general contour of the proposed airport, all as contained in a survey, as of the date of the application, by a licensed City surveyor.

(2) The location, nature and height of any structure or vertical projection within two miles from such exterior boundaries, the presence of which would constitute an obstruction to safe aerial ingress to or egress from the airport.

(3) That the surface of the airport intended for the takeoff, landing and taxiing of aircraft is firm and suitable.

(4) The markings, each constructed and painted so as to be readily discernible from the air at a minimum height of

3000 feet, to be in conformity with Federal Aviation Administration standards.

(5) That the location of the proposed airport, and the volume, character and direction of the traffic thereat will not endanger the lives and property of persons operating aircraft on or near existing airports and of occupants of land in their vicinity, nor tend to destroy or impair the utility of such airports and the investment therein; and that, in relation to existing airports, the proposed airport conforms to all spacing requirements and safety standards of applicable Federal and State laws and regulations.

(6) An application for a license or permit covering night maintenance and operation must show the number, location, type and power of lights in conformity with Federal Aviation Administration standards.

(e) The applicant must have in force upon the granting of a license or permit, liability insurance in an amount to be set by the Commissioner with the City of New York as an additional insured.

(f) The Commissioner may issue a license or permit to operate the proposed airport if, in addition to the items specified in subdivision (d) above, such airport will not be detrimental to the public safety and will be in the public interest. Such license may be limited by appropriate conditions as to type of aircraft, time and method of operation, standards of maintenance, keeping of records and safety and security precautions and such other terms and conditions as may be necessary or desirable to insure the public safety and interest and the safety of those engaging in aeronautical activities.

(g) Such license or permit shall be effective for one year from the date of issuance thereof, unless sooner revoked or suspended by the Commissioner for cause shown.

(h) No license or permit shall be revoked by the Commissioner except after a hearing upon 48 hours notice to the licensee. The Commissioner shall have the power in his discretion, to suspend such license or permit pending such hearing and determination.

(i) Each license or permit issued hereunder may be renewed annually upon application by the licensee or permittee. Such application must set forth that the airport and the operation thereof conforms to the minimum requirements set forth in the original application for the license or permit granted and complies with the regulations promulgated by the Commissioner subsequent to the date of the original license or permit.

(j) The fee for the issuance of such annual license or permit shall be $250.00, and the fee for the renewal thereof shall be $150.00.

(k) Any change in the airport or operation thereof which would affect the safe operation thereof, shall be reported immediately by the licensee or permittee in writing to the Commissioner.

(l) The failure on the part of the licensee or permittee to comply with any of the rules set forth in this chapter or hereafter adopted by the Commissioner, shall constitute sufficient cause for revocation of such license or permit. Licensee or permittee must keep accurate written records of all landings and departures, report of which must be made on a monthly basis to the Department.

(m) The City, by or through its employees, agents, representatives, or contractors, shall have the right at all times to enter upon the airport for the purpose of inspecting and/or observing the performance by the licensee or permittee of his obligations and duties.

(n) No heliport in the City of New York shall conduct operations between the hours of 11 p.m. and 7 a.m. unless a waiver has been obtained from the Commissioner or the Commissioner's designee. In granting such a waiver, the Commissioner shall take into account the health, safety and welfare of the community.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-05 Seaplane Noise Control.

In order to afford better relief and protection to the public from unnecessary seaplane noise, all seaplanes must taxi to a point at least 700 feet from the nearest shoreline before beginning a takeoff run or applying power in excess of that required for safe taxiing.

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Rules of the City of New York

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

66 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-06 Helicopter External Load Operations.

(a) It shall be unlawful for any person, firm, or corporation to use or permit the use of any helicopter or other aircraft within the confines of the City in connection with the construction, alteration, or installation of service equipment or material in or upon any building or structure or to conduct any other external load operation within the City of New York, without first obtaining a permit from the Department.

(b) Before an application for a permit will be approved by the Commissioner, applicant must meet the following requirements:

(1) The staging area must:

(i) Be of sufficient size and location as to permit helicopter landings and takeoffs without unduly creating an annoyance or safety hazard to persons or property in the area.

(ii) Permit freedom of movement for cargo, equipment, helicopter, support personnel and vehicles within the confines of that area.

(iii) Be capable of being sealed off from spectators, vehicles and pedestrians, without creating an attractive nuisance.

(iv) Be free of obstructions to helicopter flight and be capable of providing reasonable control over dust and debris which may be generated by helicopter downwash. All operations and support personnel shall be provided with suitable

protective garments, such as hearing protectors, construction helmets and goggles, as required by the Commissioner.

(v) Provide safe approach and departure paths so that in case of an emergency, an autorotational landing may be made without endangering persons or property.

(2) The discharge point must:

(i) Meet all requirements of the Department of Buildings for the installation of service equipment.

(ii) Comply with all Fire Department rules and regulations.

(iii) Comply with all Bureau of Highway Operations rules and regulations concerning the closing of streets and highways which border the operation area.

(iv) The top floors of the building structure intended as the discharge point must be evacuated of all non-essential personnel, except operations personnel, by order of the Commissioner, and all entrances and exits to the building or structure must be blocked or guarded in such a manner as to prevent their use by unauthorized personnel when the rotorcraft load combination is overhead.

(v) The flight path of the rotorcraft with the external load combination may not pass over any structures, buildings or vehicles which are occupied by any persons not connected with the operation, except that the Commissioner shall in all instances, have the power to determine all safety requirements.

(c) Applicant shall conduct test flights with the various loads to be carried to determine:

(1) That the weight of the rotorcraft load combination and location of center of gravity are within approved limits.

(2) That the load is securely fastened and does not interfere with any emergency release devices.

(3) That while hovering or on forward flight the load does not oscillate and is controllable during all phases of the operation.

(4) Each flight operation must be conducted in such a manner that in an emergency, will allow the external load to be released and the aircraft landed without hazard to persons or property.

(d) **Permit requirements:** (1) The Commissioner shall in all instances be the final authority on all matters relating to the issuance of permits. Any permits granted under this subdivision (d) may be ordered modified, suspended or revoked by the Commissioner at his discretion for any good cause.

(2) All provisions of laws and rules or regulations of any government agency may be deemed applicable by the Commissioner to insure the safety of persons or property in the air or on the ground in which case they must be complied with.

(3) All applicable labor laws, rules and regulations shall be complied with for any operation.

(4) Operations shall only be conducted during VFR conditions in the daytime. No operation will be approved during adverse or inclement weather, or if the wind exceeds 30 miles per hour or with a gust spread of no more than 15 miles per hour.

(5) Each applicant must hold a valid Rotorcraft External Load Operator Certificate, or equivalent, issued by the FAA under Part 133, as amended or superseded by applicable Federal Aviation Regulations.

(6) A violation of any rule or regulation of the FAA or any other Federal or State agency having jurisdiction over

the subject matter of the operation shall be a violation of this chapter.

(7) Each applicant must file his request on a form and in such manner as may be prescribed by the Commissioner.

(8) Upon satisfactory fulfillment of all requirements, the Commissioner may issue a permit together with any restrictions or conditions he deems necessary.

(9) Each applicant must have in force liability insurance in an amount to be determined by the Commissioner with the City of New York included as an additional insured.

(e) Applicant must permit any authorized representative of the Commissioner to conduct inspections or examinations in order to determine whether there has been sufficient compliance with applicable laws, rules and regulations.

(f) Each applicant shall prepare for the Commissioner's approval a detailed diagram of the operations area and depict thereon

(1) Optimum route of flight to the staging area for the purpose of noise abatement and avoidance of obstruction hazards.

(2) Emergency landing area within autorotational range of any and approximate point of descent to landing.

(3) Staging areas, pick-up and discharge points.

(4) Streets, highways, and building exits and entrances which must be closed.

(g) No helicopter having fewer than two engines shall be permitted to conduct external load operations in the City.

(h) **Safety.** (1) Each applicant shall provide adequate fire protection during the operation which complies with Fire Department regulations and such other requirements as are set forth herein.

(2) Each applicant shall provide adequate control communications and procedures for the operation.

(3) Each applicant shall obtain all necessary approvals and permits as required by law.

(i) **Permit fee.** The fee for the issuance of a permit for the takeoff and landing of aircraft used for the external transportation of material or equipment at a non airport location shall be $300.00.

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Rules of the City of New York

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

66 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-07 Helicopter Noise and Safety.

(a) To prevent unnecessary noise all takeoffs and landings at public use heliports in the City shall be made over water.

(b) Except where necessary for takeoff or landing or under Air Traffic Control clearance while operating in the New York Terminal Control Area, no person may operate a helicopter in the City of New York below the following altitudes:

(1) An altitude allowing, if a power unit fails, an emergency landing in the waterways of the City.

(2) An altitude of 1000 feet above the highest obstacle or within a horizontal radius of 1000 feet of the aircraft, except over open water.

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Rules of the City of New York

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

66 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-08 Landing and Takeoff at Other Than Licensed Heliports, Airports and Seaplane Bases.

(a) No aircraft shall land or takeoff within the limits of the City of New York except at licensed airports unless a permit allowing such operation has been obtained from the Commissioner.

(b) Any person may file an application in writing with the Department at its office, 110 William Street, 3rd floor, New York, New York, 10038.

(c) The application shall be subject to investigation and report by the Commissioner or his duly authorized representative.

(d) The application for a permit must show:

(1) A plot map showing the location of the proposed operation.

(2) Make, model and registration numbers of aircraft.

(3) Name and qualifications of the pilot-in-command.

(4) Permission of the property owner for the proposed operation.

(5) Purpose of the operation.

(e) The applicant must have in force upon the granting of the permit, liability insurance in such amounts and upon

such terms as deemed appropriate by the Commissioner and with the City of New York as additional insured.

(f) No materials or equipment shall be transported outside of the aircraft.

(g) The Commissioner may issue a permit for the proposed operation if, in the Commissioner's judgment, the conduct of such operation will be in the public interest and not detrimental to public safety.

(h) The fee for the issuance of such permit shall be $200.00 and the fee for the renewal thereof shall be $135.00.

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Rules of the City of New York

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

66 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-09 Lighter-Than-Air and Glider Operation.

(a) No airship, balloon in free flight, or tethered balloon flight shall land or takeoff within the limits of the City unless a permit allowing such operation has been obtained from the Commissioner.

(b) No glider shall takeoff or land within the limits of the City unless a permit allowing such operation has been obtained from the Commissioner. No engine powered aircraft shall tow a glider into the air within the limits of the City unless such a permit allowing such operation has been obtained from the Commissioner.

(c) Any person seeking such a permit shall file an application with the Department at its office, 110 William Street, 3rd floor, New York, N.Y. 10038. Such application shall be in writing.

(d) The application shall be subject to investigation and report by the Director of Aviation of the Department.

(e) The application for a permit must show:

(1) A plot map showing the location for the proposed operation.

(2) Make, model and registration number of aircraft.

(3) Name and qualifications of the pilot-in-command.

(4) Permission of the property owner for the proposed operation.

(5) Purpose of the operation.

(f) The applicant must have in force upon granting of the permit liability insurance in an amount to be set by the Commissioner with the City of New York included as an additional insured.

(g) The Commissioner may issue a permit for the proposed operation if, in such Commissioner's judgment, the conduct of such operation will not be detrimental to the public safety and will be in the public interest.

(h) The fee for the issuance of such permit shall be $200.00, and the fee for the renewal thereof shall be $135.00.

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Rules of the City of New York

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

66 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-10 Unauthorized Takeoffs and/or Landings.

(a) It shall be unlawful for any person navigating an aircraft to take-off or land at any place within the limits of the City other than at places designated for this purpose by the Commissioner.

(b) The provisions provided for herein shall not apply to any aircraft which is operated under emergency conditions, nor are they intended to supplant the decisions of the pilot-in-command when such decisions relate directly to acts intended to safeguard the pilot, aircraft, or its passengers.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-11 Reports.

The owner or operator of any aircraft involved in an accident or incident within the limits of the City must, in addition to any Federal or State reporting requirements, file a report with the Commissioner within 24 hours of such occurrence.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 3 AVIATION

§3-12 Penalties.

The failure on the part of the licensee or permittee to comply with any of the rules set forth in this chapter or hereafter adopted by the Commissioner, shall constitute sufficient cause for revocation of such license or permit.

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Rules of the City of New York

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

66 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 4 FEES

§4-01 Work Notice and Work Permit Fees.

(a) The six categories of fees charged by the Department of Business Services in connection with the issuance of work notices and work permits are:

(1) **New building fee.** New building fee based on square footage;

(2) **Open area fee.** Open area fee such as lumber yard container terminal, storage, etc., based upon square footage;

(3) **Miscellaneous fee.** Miscellaneous fee for such work as plumbing, electrical, demolition, bulkheads, etc., based on cost;

(4) **Amendment fee.** Amendment fee for any change or revision of a previously issued permit;

(5) **Fee for Change of Use.** Fee for Change of Use involving no physical work; and

(6) **Special fees.** Special fees for notarization of documents and photocopies.

(b) The fee schedule below lists each of these categories separately. One hundred percent of the fee is due at the time of filing a permit application and fees are not refundable. All applications must be accompanied by the full fee in order to be processed. A fee computation should be included with each application.

[See tabular material in printed version]

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Rules of the City of New York

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

66 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 4 FEES

§4-02 Contract Bid Fees.

Contract documents may be obtained at the Department of Business Services, 110 William Street, 3rd floor, New York, N.Y. 10038 at a cost of $45.00 each, which will not be refunded.

Only cash (exact change only) or certified check, payable to the Comptroller of the City of New York will be accepted for the payment of each document.

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Rules of the City of New York

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

66 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-01 Authority; Purpose.

(a) These rules are promulgated pursuant to Local Law 54 of the Laws of 1985 of the City of New York, as amended, as authorized by Chapter 551 of the Laws of 1985 of the State of New York, as amended, to effectuate the purposes of the New York City Energy Cost Savings Program (the "Program").

(b) The purpose of the Program is to encourage industrial and commercial development, by encouraging businesses to relocate to targeted areas of the City and providing incentives to business already located in such areas to expand or improve their industrial and commercial space. The Program provides a reduction of certain energy costs related to the transmission and distribution of electricity and natural gas for a period of twelve (12) years, including reductions in the cost of energy services purchased from the New York City Public Utility Service.

(c) These rules set forth the requirements for applications, the standards and criteria to determine eligibility for reduced energy costs and the amount available for**2 reductions in energy costs, as well as procedures for review of determinations made in connection with the Program.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Subd. (b) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 2]: ** "for" added by Editor.

Rules of the City of New York

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

66 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-02 Definitions.

As used in these rules, the following terms shall have the respective meanings set forth below:

Act. "Act means Chapter 6 of Title 22 of the Administrative Code of the City of New York, as enacted by Local Law 54 of the Laws of 1985 of the City of New York, as amended by Local Law 56 of the Laws of 1989 of the City of New York, Chapters 256 and 257 of the Laws of 1991, Chapter 154 of the Laws of 1999, Chapters 103 and 472 of the Laws of 2000, and Chapter 107 of the Laws of 2003 of the State of New York, as authorized by Chapter 551 of the Laws of 1985 of the State of New York, as amended by Chapters 59 and 825 of the Laws of 1986, Chapter 760 of the Laws of 1988, Chapters 256 and 257 of the Laws of 1991, Chapter 154 of the Laws of 1999, Chapters 103 and 472 of the Laws of 2000, and Chapter 107 of the Laws of 2003 of the State of New York.

Applicant. "Applicant" means any person applying individually or jointly for benefits under ECSP, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the application for a certificate of eligibility and shall include all supporting exhibits submitted, and statements made, by an applicant to the commissioner for the purpose of determining such applicant's eligibility for benefits under ECSP.

Assessed value. "Assessed value" means the assessed value of the real property and buildings thereon as assessed

for tax purposes during the tax year in which improvements to such real property and buildings thereon commenced, as required by and referred to in the Act and these rules.

Average monthly consumption. "Average monthly consumption" means, for each natural gas account, the average number of therms of natural gas consumed per month during the preceding twelve billing monthly or six bimonthly billing cycles.

Average monthly load factor. "Average monthly load factor" means, for each electric account, the average monthly load factor for the preceding 12-month period, determined once annually using the most recently available twelve months of load factor data.

Benefit period. "Benefit period" means the number of months a recipient is eligible to receive a special rebate, which period shall not exceed one hundred and forty-four (144) consecutive months, beginning on the effective date of the recipient's certificate of eligibility.

Building. "Building" means articles, structures, substructures and superstructures erected upon, under, or above real property, or affixed thereto, and fixtures (other than trade fixtures) and other improvements erected or situated thereon.

Building permit. "Building permit" means a permit approving proposed construction work issued by the New York City Department of Buildings, DBS or other agency of the City authorized by law to receive and approve plans for construction work. A building permit shall include permits or a new building, alteration, foundation, plumbing, sign or equipment work and may, at the option of the applicant, include a permit for partial demolition or earthwork.

Category I on-site cogenerator. "Category I on-site cogenerator" shall mean an on-site cogenerator that produces electricity for an eligible energy user that was certified before July 1st, 2003.

Category II on-site cogenerator. "Category II on-site cogenerator" shall mean an on-site cogenerator, other than a clean on-site cogenerator, that was certified after June 30, 2003.

Certificate of eligibility. "Certificate of eligibility" means the document or documents issued by the commissioner evidencing the eligibility and qualification of an applicant to receive a special rebate. The certificate of eligibility shall include such information as is required pursuant to §5-42(b) of these rules.

Charter. "Charter" means the New York City Charter, as amended.

City. "City" means The City of New York.

Clean on-site cogenerator. "Clean on-site cogenerator" shall mean an on-site cogenerator, the electricity generating facility of which has an emission rate for nitrous oxides of no more than three tenths of one pound per megawatthour. For purposes of determining the emissions of such electricity generating facility, the emissions for such facility shall be reduced by the amount of any nitrous oxide emissions by boiler plants and/or other generators located on the same site as the on-site cogenerator that were or will be avoided by virtue of the electricity generating facility's production of thermal products used by an eligible energy user(s) for productive purposes.

Code. "Code" means the Administrative Code of the City of New York, as amended.

Commercial development pressure area. "Commercial development pressure area" means those areas of the City as set forth in subdivision (a) of §22-601 of the code.

Commissioner. "Commissioner" means the Commissioner of DBS or his or her designee or his or her successor in function.

Competitive transition charge. "Competitive transition charge" means a charge that is regulated by the PSC, associated with charges for transmission and distribution, and designed to enable a utility to mitigate or recover its above-market costs of generating electricity.

Con Edison. "Con Edison" means the Consolidated Edison Company of New York, Inc.

DBS or DSBS. "DBS" or "DSBS" shall mean the New York City Department of Small Business Services, formerly known as the Department of Business Services, or its successor in function.

DOF. "DOF" means the New York City Department of Finance or its successor in function.

Discount. "Discount" means the amount of a reduction in a bill for energy services rendered to a vendor or NYCPUS by a utility, or to a vendor by NYCPUS, in accordance with the requirements of §5-15 of these rules, equal to the special rebates made by such vendor or NYCPUS to eligible energy users, eligible owners or qualified eligible energy users.

ECSP or Program. "ECSP" or the "Program" means the Program described in the Act and these rules.

Effective date. "Effective date" means the effective date of a certificate of eligibility, which date is the first day of the first billing cycle after a certificate of eligibility is issued.

Eligible charges. "Eligible charges" mean charges for energy services, system benefits charges and competitive transition charges, including service discounts, by a utility determined in accordance with §5-13(a) of these rules, to which charges the applicable percentages in §5-16 or §5-18 of these rules are applied to determine the amount of a special rebate.

Eligible energy user. "Eligible energy user" means any non-residential user of energy services, that purchases such energy services directly from a utility, a vendor, NYCPUS or an on-site cogenerator, and that satisfies the applicable criteria set forth in Subchapter B of these rules.

Eligible move-in area. "Eligible move-in area" means:

(1) with respect to an applicant that relocates from (i) areas lying south of the center line of 96th Street in the Borough of Manhattan, or (ii) all areas outside of the City, to replacement premises, all areas within the City, except those areas lying south of the center line of 96th Street in the Borough of Manhattan;

(2) with respect to an applicant that relocates from premises within a commercial development pressure area to replacement premises, all areas within the City except (i) those areas lying south of the center line of 96th Street in the Borough of Manhattan and (ii) commercial development pressure areas;

(3) with respect to an applicant that occupies premises that meet the criteria of §5-12(b) (specially eligible premises) of these rules, all areas within the City except those areas lying south of the center line of 96th Street in the Borough of Manhattan; and

(4) with respect to an applicant that occupies premises that meet the criteria of §5-12(c) (manufacturing) of these rules, those areas lying south of the center line of 96th Street in the Borough of Manhattan.

Eligible move-out area. "Eligible move-out area" means with respect to an applicant that relocates and occupies replacement premises:

(1) areas lying south of the center line of 96th Street in the Borough of Manhattan;

(2) all areas outside of the City; or

(3) a commercial development pressure area.

Eligible on-site cogenerator charges. "Eligible on-site cogenerator charges" shall mean charges for energy services purchases from a utility related to the delivery of natural gas to a category II on-site cogenerator determined in accordance with §5-13(d).

Eligible owner. "Eligible owner" means an owner, manager or operator of a specially eligible premises that satisfies the applicable criteria of Subchapter B of these rules.

Eligible premises. "Eligible premises" mean those premises that are: (1) replacement premises; or (2) specially eligible premises.

Eligible public utility service charges. "Eligible public utility service charges" mean charges for energy services purchased from NYCPUS, determined in accordance with §5-13(b) of these rules, to which the applicable percentage in §5-16 or §5-18 of these rules are applied to determine the amount of a special rebate.

Employee. "Employee" shall mean any full-time or part-time employee (as provided herein) of an eligible energy user, an affiliate of an eligible energy user, and any contractor working exclusively at an eligible site for operations of an eligible energy user (or an affiliate of an eligible energy user) eligible to receive special rebates. The number of part-time employees and contractors shall be calculated by dividing (i) the number of hours worked by employees, other than full-time employees, and contractors at the eligible energy user's eligible premises, during the applicable period; by (ii) the number of weeks in the applicable period; and then by (iii) 35 person-hours.

Energy conservation measures. "Energy conservation measures" shall have the meaning set forth in subdivision (p) of §22-601 of the code.

Energy services. "Energy services" shall mean (i) the transportation of electric or natural gas commodity within the franchised service territory of a utility through such utility's local transmission or distribution assets, (ii) metering of a user's consumption, including meter reading, and (iii) billing services related to the preparation and collection of the user's utility bill. Energy services shall not include the provision of gas or electric commodity, transmission-related functions for which charges are rendered by the New York Independent System Operator, nor shall they include transportation of gas or electric commodity to a utility system, except that gas pipeline services shall be considered energy services for purposes of calculating rebates for users eligible to receive rebates under §5-18(b)(5) of these rules. Energy services shall not include transportation of natural gas to the extent the gas transported is used by a category I on-site cogenerator or a clean on-site cogenerator in the production of electricity that is eligible for special rebates under §5-14(f).

Energy services bill. "Energy services bill" means the statement of charges for energy services rendered to a recipient by: (i) a utility; (ii) a vendor; or (iii) NYCPUS.

FERC. "FERC" shall mean the Federal Energy Regulatory Commission.

Hotel. "Hotel" means a building or portion thereof that is regularly used and kept open as such for the lodging of guests including an apartment hotel, a motel, boarding house or club or any other facility whose principal use is residential accommodation, whether or not meals are served.

ICIP. "ICIP" means the New York City Industrial and Commercial Incentive Program as codified in Title 11, Chapter 247, Part 3 of the Code, as amended.

IDA. "IDA" means the New York City Industrial Development Agency established pursuant to §850 of the General Municipal Law of the State of New York, as amended.

Keyspan. "Keyspan" means the Keyspan Energy Delivery New York.

LIPA. "LIPA" shall mean the Long Island Power Authority, or its subsidiary.

Manufacturing activity. "Manufacturing activity" means an activity involving the assembly of goods to create a different article or the processing, fabrication, or packaging of goods.

Monthly load factor. "Monthly load factor" means, for each electric account, the number determined by dividing (a) the account's energy consumption, measured in kilowatt hours, for a monthly billing period, by (b) the peak electric demand, measured in kilowatts, for such billing period multiplied by the number of billing days in the period multiplied by 24 hours.

NYCPUS. "NYCPUS" means the New York City Public Utility Service established by Local Law No. 78 of 1982, codified in part as Title 22, Chapter 3 of the Code.

On-site cogenerator. A person, other than a utility, that owns an electric generating facility that simultaneously or sequentially produces electricity and useful thermal energy, provided that substantially all of such electricity shall be used by one or more eligible energy users that occupy the same site as such generating facility. An on-site cogenerator may be the same or a separate person as such eligible energy user.

Person. "Person" means any individual, partnership, association, corporation, limited liability company, estate or trust, and any combination of the foregoing.

Premises. "Premises" mean any building or portion thereof that, for purposes of these rules is, or has been, occupied in whole or in part by an applicant pursuant to a deed, contract of sale, lease or otherwise.

Public Service Commission or PSC. "Public Service Commission" or "PSC" means the Public Service Commission of the State of New York, created by and defined in §2 of the Public Service Law of the State of New York.

Qualified eligible energy user. "Qualified eligible energy user" shall have the meaning ascribed to such term in subdivision (r) of §22-601 of the code.

Real property. "Real property" means land and articles, structures, substructures and superstructures erected upon, under or above the land or affixed thereto and articles of equipment, as described by, and subject to assessment for taxation pursuant to subdivision (a), (b), (f) or (i) of §102(12) of the Real Property Tax Law of the State of New York, but not including any incorporeal right, franchise or special franchise.

Recipient. "Recipient" means an applicant that has satisfied the eligibility criteria of Subchapter B of these rules and has been certified by the commissioner as: (1) an eligible energy user; (2) an eligible owner; (3) a qualified eligible energy user; or (4) a category I on-site cogenerator, a category II on-site cogenerator, or a clean on-site cogenerator.

Replacement premises. "Replacement premises" mean premises occupied by an applicant in replacement of previously occupied premises from which the applicant has relocated, provided the premises satisfy the criteria set forth in §5-12(a) of these rules.

Retail vendor. "Retail vendor" means any applicant that:

(1) is predominantly engaged in the sale, as defined in §1101(b)(4) of the Tax Law of the State of New York, other than through the mail or by the telephone or other means of electronic communication, of tangible personal property to any person, for any purpose unrelated to the trade or business of such person; or

(2) is predominantly engaged in selling services to persons which services generally involve the physical, mental

and/or spiritual care of such persons for any purpose unrelated to the trade or business of such persons; or

(3) is predominantly engaged in selling services to persons for any purpose which services generally involve the physical care of the personal property of such persons for any purpose unrelated to the trade or business of such persons; provided, however, where such sale of tangible personal property or services described herein is performed by only one or more operating units, divisions or subdivisions of the applicant, or at only one or more locations, only such operating units, divisions, or subdivisions, or such locations, shall come within the definition contained herein.

Service classification. "Service classification" means the classification used by a utility in its rate schedule that sets forth the particular rates charged for energy services that are applicable to particular kinds of customers.

Site visit. "Site visit" means an on-site inspection performed by or at the direction of DBS to determine the use of energy services or occupancy of certain buildings, real property or any portion of such building or real property.

Special rebate. "Special rebate" means the amount of reduction in an energy services bill rendered by a utility, a vendor or NYCPUS for energy services to an eligible energy user, a qualified eligible energy user, an eligible owner, or an agent of any of these, or a category I, II or clean on-site cogenerator, and calculated in accordance with the provisions set forth in §5-14 of these rules.

Specially eligible premises. "Specially eligible premises" means non-residential premises that meet the requirements set forth in subdivision (i) of §22-601 of the code and §5-12(b) of these rules.

Survey. "Survey" means a study or report based on on-site field inspections, professional surveys by a licensed professional engineer, data collection or meter readings or other actions to determine the use, consumption and application of energy services or the occupancy of certain buildings or real property, or portions thereof.

Systems benefit charge. "Systems benefit charge" means a charge that is regulated by the PSC and that a utility is required to collect from its customers for the purposes of funding public benefit programs.

Targeted eligible premises. "Targeted eligible premises" shall have the meaning set forth in subdivision (s) of §22-601 of the code.

UDC. "UDC" means the New York State Urban Development Corporation or any subsidiary thereof created and defined by §6254 of the Unconsolidated Laws of the State of New York.

Utility. "Utility" means any provider of energy services within the City that is subject both to the jurisdiction and general supervision of the PSC and to a tax imposed pursuant to chapter 11 of title 11 of the code, and for purposes of this chapter 5, shall include LIPA, or its subsidiary, to the extent that LIPA provides energy services within the City of New York and makes payment to such City that is equivalent to the tax imposed on utilities pursuant to chapter 11 of title 11 of the code.

Utility credit. "Utility credit" means a credit to which a utility is entitled, in accordance with the rules promulgated by DOF, against the tax imposed under Chapter 11 of Title 11 of the code, and equal to the aggregate amount of all special rebates and/or discounts granted by such utility in accordance with the requirements of the Act and these rules.

Vendor. "Vendor" means a vendor of energy services, as defined in subdivision (k) of §22-601 of the code, including any person, corporation or other entity not subject to the jurisdiction and general supervision of the PSC, that furnishes or sells energy services to an eligible energy user, eligible owner, qualified eligible energy user or an on-site cogenerator that is submetered as an incident to leasing, subleasing, licensing or otherwise permitting such user to rent or occupy premises of such vendor.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Act amended City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

Average monthly consumption added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Average monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Category I on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Category II on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Clean on-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Con Edison added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

DBS or DSBS amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Eligible charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Eligible on-site cogenerator charges added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Eligible public utility service charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible public utility service charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Employee added City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Energy services amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Energy services amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Energy services amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Keyspan added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

LIPA added City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

LIPA added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

On-site cogenerator added City Record June 25, 2004 §1, eff. July 25, 2004. This definition supersedes the previous definition which was not repealed. [See Note 1]

Recipient amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Service classification added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Special rebate amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

Utility amended City Record June 25, 2004 §1, eff. July 25, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 25, 2004:

The new rules implement programmatic changes to the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP") required and authorized under Chapter 107 of the Laws of 2003.

The following programmatic changes to the ECSP and LMEP are required by Chapter 107 of the Laws of 2003: (i) a revised ECSP rebate formula and eligibility criteria for on-site cogenerators certified after June 30, 2003, (ii) a limit on ECSP benefits for all applicants equal to $10,000 per employee annually, (iii) the provision of ECSP rebates on charges for energy services provided to eligible New York City businesses by the Long Island Power Authority, and (iv) the extension of the sunset date for new applications of both programs to June 30, 2005. The proposed amendments would conform the rules for ECSP and LMEP to these legislative changes.

The rules would also implement a transition period for on-site cogenerators that apply after June 30, 2003, to serve eligible energy users certified before July 1, 2003. Under existing rules, certifications of on-site cogenerators for participation in the ECSP have been made as of the date that the eligible energy user was certified. In the future, such certifications will be made separately from that of the eligible energy user, but for an interim period ending June 30, 2005, on-site cogenerators serving eligible energy users that were certified before July 1, 2003, will be eligible as "Category I" on-site cogenerators to receive special rebates under the formula in the law that is based on 4.44 cents per kilowatt hour. The benefit period of such cogenerators will coincide with that of the eligible energy user served by the cogenerator.

Further, where a cogenerator is able to demonstrate that, as of June 30, 2003, it met all of the eligibility criteria of a Category I on-site cogenerator in substance, but verification of the minimum required expenditure had not been provided by the Industrial and Commercial Incentive Program, it will be treated as a Category I on-site cogenerator.

Chapter 107 of the Laws of 2003 authorizes the Commissioner to set appropriate application fees for the ECSP to defray program administrative costs, which currently exceed program fee revenue. The new rules contain a new fee schedule for ECSP applicants. The fee schedule for the LMEP has also been revised to defray administrative costs, under existing statutory authority.

The new rules also include four administrative changes to clarify and streamline the existing rules. First, they revise Schedule D-1 of Chapter 5 to conform it to other provisions of applicable law and rules. The strict application of the percentages for the higher levels of use of natural gas in Schedule D-1 would yield, in some cases, a rebate greater than 100% of energy services charges, a result that conflicts with other provisions, clearly stated in the law and rules, that no program participant may receive greater than a 100% rebate on its energy services charges. Further, the rebate levels permitted under the original Schedule D-1, when prorated in the last four years of the benefits term, could result in an uneven phase-out of benefits. The revised schedule D-1 cures these inconsistencies.

Second, the new rules have been revised to state that the applications of applicants that make no substantial

progress toward obtaining certification within five years of submission of their applications shall be considered invalid. Applicants will be given the opportunity to "renew" their application by updating information provided on the form and paying a new application fee. This change will close a loophole in the program rules that would allow firms to claim favorable treatment by relying on applications submitted before November 1, 2000 in anticipation of relocation and/or renovation projects that were never completed.

Third, the new rules explicitly state that ECSP benefits may be terminated if a firm fails to confirm its continued occupation of eligible premises or submit other information requested on the continuing use. Without such information, DSBS cannot be certain that ECSP rebates are being provided to eligible firms.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-03 Law Governing Applications.

Applications pending as of the effective date of these rules and applications filed subsequently shall be governed by these rules. Persons that have been certified as eligible for special rebates or discounts under provisions of law in effect before November 1, 2000, are not required to reapply in order to receive benefits under provisions of Chapter 472 of the Laws of 2000.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §2, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-04 Rules of Construction.

(a) These rules shall be interpreted and enforced in accordance with the General Construction Law of the State of New York except where the context otherwise requires or a different rule is provided by these rules.

(b) These rules shall be construed consistently with the applicable state and local law cited in this Subchapter of these rules including any amendments thereto.

(c) Provisions of these rules that restate the Act and that do not provide rules or procedures for the exercise of regulatory authority shall not be construed as increasing or diminishing any rights or duties created by the Act, but may be used to assist in the interpretation of the Act.

(d) When the interpretation or application of a provision of these rules in a particular case is uncertain, the description of the purpose and objectives of ECSP set forth in §5-01 of these rules shall be used to assist in the interpretation and application of such provision.

(e) Reference to particular provisions of law in these rules shall be deemed to refer to such provisions as interpreted by the applicable decisions of Federal and New York State courts.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-05 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or recipient's refusal to provide factual information or to cooperate with the commissioner or his or her staff in the review of the facts and circumstances upon which a determination of eligibility or of continued eligibility is to be based shall constitute grounds for denial of an applicant's eligibility, or for suspension or revocation of a recipient's certificate of eligibility.

(b) The commissioner may deny an application for a certificate of eligibility if the application is found to contain material misrepresentations, misstatements or omissions.

(c) The commissioner may suspend or revoke a certificate of eligibility if a recipient is found to have made material misrepresentations or misstatements or omissions concerning the prior, current or future status of its continued eligibility under ECSP.

(d) Denial of an application for a certificate of eligibility or the suspension or revocation of a certificate of eligibility pursuant to the provisions of this Subchapter shall be subject to an opportunity to be heard pursuant to §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-06 Actions of City Employees.

Employees and agents of the City whose duties require them to take actions in connection with ECSP shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules. However, noncompliance by such employees or agents with the requirements of these rules shall not be deemed to void any obligation of, or to waive any requirement imposed on, an applicant or recipient, or to excuse any noncompliance by an applicant or recipient with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-07 Separability.

If any provision of these rules or their application shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these rules, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by

the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-08 Effective Date of Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section amended City Record June 18, 2001 eff. July 18, 2001.

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-11 Energy Users.

(a) Only eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators, as described in, and to the extent permitted by, the Act and these rules are eligible for special rebates under ECSP.

(b) Eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators shall not include the following users of electricity and/or natural gas:

(1) residential users;

(2) government agencies;

(3) public benefit corporations, or instrumentalities thereof;

(4) hotels; and

(5) retail vendors.

(c) An eligible energy user is an applicant or recipient that meets the criteria in paragraph (1) of this subdivision or is an eligible owner that meets the criteria in paragraph (2) of this subdivision:

(1) Such applicant or recipient: (i) purchases energy services from a utility, vendor or NYCPUS; (ii) relocates to and occupies premises that qualify as replacement premises or occupies premises that are specially eligible premises or a portion of such premises; and (iii) otherwise complies with all requirements of the Act and these rules applicable to an eligible energy user or

(2) Such applicant or recipient, referred to as an eligible owner, (i) purchases energy services from a utility or NYCPUS; (ii) owns, operates or manages real property and/or a building, which building and/or real property qualifies as a specially eligible premises; and (iii) otherwise complies with all requirements of the Act and these rules applicable to an eligible owner.

(3) An applicant or recipient may, if all requirements are met, qualify as both (i) an eligible owner and (ii) an eligible energy user and/or qualified eligible energy user. In such cases, the applicant or recipient may be an eligible owner with respect to the specially eligible premises as a whole and therefore may be entitled to a special rebate applied against certain eligible charges with respect to common areas and/or equipment, as provided in §5-13(c) of these rules. Such an applicant or recipient may also be an eligible energy user or qualified eligible energy user with respect to the premises it occupies within such specially eligible premises or targeted eligible premises, as the case may be, and therefore may be entitled to a special rebate applied against certain other eligible charges or eligible public utility charges with respect to such premises, as provided in these rules. Provided, however, that no portion of energy services used by such an applicant or recipient shall be the basis for more than one special rebate.

(d) A qualified eligible energy user is a recipient that: (i) has been certified as a qualified eligible energy user in accordance with the Act prior to November 1, 2000; (ii) purchases energy services from NYCPUS or a vendor that purchases such services from NYCPUS; and (iii) otherwise complies with all requirements of the Act and these rules applicable to a qualified eligible energy user.

(e)(1) An on-site cogenerator is an applicant or recipient that: (i) meets the definition of a category I or category II on-site cogenerator or a clean on-site cogenerator in §5-02 of these rules; (ii) purchases energy services relating to natural gas from a utility; (iii) otherwise complies with all requirements of the Act and these rules applicable to a category I or category II on-site cogenerator or a clean on-site cogenerator, respectively, and (iv) sells substantially all its electricity output to eligible energy users on the same site.

(2) A category I or clean on-site cogenerator may, if all requirements are met, qualify as an eligible energy user with respect to charges for energy services that are not used in the production of electricity, including charges for the production of thermal product, provided, however, that no portion of energy services, or natural gas energy services in the case of a category I on-site cogenerator or a clean on-site cogenerator, used by such on-site cogenerator shall be the basis for more than one special rebate.

(f) Notwithstanding the foregoing provisions of this section, an occupant of replacement premises, specially eligible premises, or targeted eligible premises shall not be an eligible energy user or qualified eligible energy user unless:

(i) the energy services used and electricity and natural gas consumed by such occupant at such premises are individually and accurately metered or submetered and billed so as to enable a determination of the occupant's usage of and charges for energy services, natural gas and electricity; and

(ii) for any occupant purchasing energy services, natural gas or electricity from a vendor, the price charged by such vendor shall be no higher than the price that the occupant would have been charged directly by a utility for energy services pursuant to the applicable tariffs of the PSC or FERC, provided that an additional fee, not exceeding 12% may be charged by such vendor; and

(iii) such vendor shall separately state in each bill for such services, electricity and natural gas the price, charges and fees (if any) that are included in such bill and the amount of the special rebate made to such occupant or that no

special rebate has been made.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §3, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-12

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-12 Premises.

(a) **Criteria for replacement premises.** (1) In order for an applicant's premises to qualify as replacement premises:

(i) the applicant must take occupancy of such premises after May 3, 1985;

(ii) the applicant must continue such occupancy while a special rebate is received;

(iii) the premises must:

(A) be non-residential;

(B) be premises for which an applicant has entered into a written agreement to buy and/or lease after May 3, 1985;

(C) be located in an eligible move-in area;

(D) except as otherwise provided in subparagraph (E) of this paragraph, be premises with provisions to receive energy services either: (I) from a utility; (II) a vendor; or (III) NYCPUS; and

(E) if such premises receive electricity from an on-site cogenerator, such on-site cogenerator shall occupy the same

site as such premises;

(iv) the premises such applicant previously occupied must have been located in an eligible move-out area, and the applicant must have occupied such premises for a continuous period of twenty-four (24) months during the thirty (30) month period immediately preceding the applicant taking occupancy of its new premises.

(2) An applicant's new premises shall not be considered replacement premises if the new premises are occupied as the result of a merger of the applicant with or into any other person, firm or entity, or the acquisition, by the applicant, of all or substantially all of the capital stock or assets and properties of any other person, firm or entity, unless:

(i) the new premises were formerly occupied by such other person, firm or entity;

(ii) such other person, firm or entity: (i) had substantially ceased business operations at the new premises prior to occupancy by the applicant; and (ii) had either: (A) filed or acquiesced in the filing against it of a petition for any relief under any bankruptcy or similar law for the protection of debtors, prior to occupancy by the applicant; or (B) applied for or acquiesced in the appointment of a trustee or receiver for all or a substantial portion of its assets and properties, prior to occupancy by the applicant;

(iii) the applicant transfers or relocates, from its previously occupied premises to the new premises, a substantial amount of personnel, and/or machinery or equipment, and/or other tangible assets, and/or executory contracts (contracts not yet performed in whole or in part, and which will be performed at the new premises); and

(iv) the applicant conducts, at the new premises, the same type of business conducted at its previously occupied premises and/or a type of business reasonably related thereto or constituting a reasonable expansion or growth therefrom.

(b) **Criteria for specially eligible premises.** (1) Specially eligible premises shall meet the applicable requirements of subdivision (i) of §22-601 of the code and:

(i) the real property and/or building in which such premises are located shall be substantially improved by construction or renovation as described or identified in either:

(A) an ICIP pre-application or application filed by the owner, manager or operator of the real property and/or building; or

(B) an IDA application filed by such owner, operator or manager; or

(C) a lease for the real property submitted for approval to UDC or to the City in accordance with the applicable Charter provisions (provided that such lease need not describe or identify buildings located or to be located on such real property), whichever is applicable;

(ii) the expenditures for such construction or renovation required by subdivision (i) of §22-601 of the code shall occur either:

(A) subsequent to the filing of such final application or preliminary application with ICIP, and the issuance of a building permit, if required, for such construction or renovation; or

(B) subsequent to the receipt of an inducement resolution from IDA for the project described in such IDA application; or

(C) subsequent to the approval of the lease described in subparagraph (4) or (5) of subdivision (i) of §22-601 of the code by UDC or by the City in accordance with the applicable Charter provisions;

(iii) for applications made after the effective date of these rules, the expenditures made for such construction or renovation described in paragraph (1) of this subdivision (b) of this §5-12, must be in excess of ten percent (10%) of the assessed value of the real property and building in the tax year in which such construction or renovation commenced;

(iv) the real property and building are located in an eligible move-in area;

(v) the premises have provisions to receive energy services either: (I) directly from a utility; or (II) from a vendor; or (III) from NYCPUS;

(vi) the applicant must take occupancy of such premises and continue in such occupancy while benefits are received;

(vii) if such premises receive electricity from an on-site cogenerator, such on-site cogenerator shall occupy the same site as such premises; and

(viii) if the applicant's premises are contained in a newly constructed building, such building must meet the requirements of the New York State Energy Conservation Construction.

(2) Notwithstanding the provisions set forth in subparagraph (A), paragraph (1) of this subdivision (b), an applicant that occupies premises within a building that would otherwise qualify as eligible to receive benefits under ICIP except that the real property on which such building is located is exempt from real property taxation, may be eligible as an occupant of premises within specially eligible premises, if all other applicable requirements of eligibility of this Subchapter B are met and such applicant receives a certification from DOF stating that the premises are within a building for which expenditures for improvements have been made in compliance with the applicable provisions of subdivision (i) of §22-601 of the code and this paragraph (b).

(c) **Special criteria applicable to manufacturing premises located in Manhattan below 96th Street.** Non-residential premises contained in real property located in the area lying south of the center line of 96th Street in the Borough of Manhattan may qualify as specially eligible premises if the criteria in paragraph (4) of subdivision (i) of §22-601 of the code and the provisions of subdivision (b) of this §5-12 for specially eligible premises are otherwise satisfied where such premises are used primarily for manufacturing activities, provided such premises shall be improved as a result of expenditures in an amount in excess of ten per centum of the assessed value of such real property attributable to such premises at which such real property was assessed for tax purposes for the tax year in which such improvements commenced.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain

the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-13

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-13 Charges.

(a) **Eligible charges.** (1) Eligible charges are charges for energy services purchased by an eligible energy user, an eligible owner, or a qualified eligible energy user from a utility or from a vendor at a rate or rates established pursuant to an order or rule of the PSC or FERC, other than charges for the purchase of the commodity of natural gas or electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision (a).

(2) Eligible charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for energy services that are resold; and

(iii) charges for energy services used in the production of electricity or for heating the premises.

(b) **Eligible public utility service charges.** (1) Eligible public utility service charges are actual charges for energy services provided by a public utility service, including charges for public utility service administrative services, and

shall include all taxes payable thereon, and shall exclude charges in accordance with paragraph (2) of this subdivision (b).

(2) Eligible public utility service charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user or qualified eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for such energy services that are resold; and

(iii) charges for energy services used in the production of electricity or for heating the premises.

(c) **Eligible charges for common areas in specially eligible premises.** (1) With respect to an eligible owner that owns, operates or manages specially eligible premises or targeted eligible premises in which at least fifty percent (50%) of the square footage of such specially eligible premises is occupied by recipients, eligible charges or eligible public utility service charges shall include the following:

(i) eligible charges or eligible public utility charges for any common areas within the specially eligible premises, including but not limited to, the elevators, roof, parking garages, lobby, and vestibules; and

(ii) eligible charges or eligible public utility charges for the office space that is reasonably required for use by the eligible owner for the operation or management of the specially eligible premises, as determined by the commissioner, if applicable.

(d) **Eligible on-site cogenerator charges.** (1) Eligible on-site cogenerator charges are charges for energy services purchased by a category II on-site cogenerator from a utility related to the delivery of natural gas to such co-generator at rates established pursuant to an order or rule of the PSC or the FERC, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision.

(2) Eligible on-site cogenerator charges shall not include the following charges:

(i) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges, excess distribution charges, or any additional fee charged by a vendor to an eligible energy user for energy services, as authorized by paragraph §5-11(f)(ii) of these rules;

(ii) charges for energy services that are resold;

(iii) charges for energy services used for heating the premises; and

(iv) any charges that qualify as eligible charges and for which special rebates are provided under other provisions of ECSP.

(e) **Determination of eligible charges, eligible public utility service charges, and eligible on-site cogenerator charges by the commissioner.** (1) The commissioner shall base his or her determination of which charges are eligible charges, eligible public utility charges, or eligible on-site cogenerator charges based upon:

(i) representations and/or certifications made by the applicant in its application to ECSP;

(ii) a review of the applicant's prior energy services bills;

(iii) a site visit; and/or

(iv) any other relevant factors relating to use and occupancy that is deemed by the commissioner to be relevant in making such a determination.

(2) An eligible energy user, qualified eligible energy user, or category II on-site co-generator has the burden of demonstrating to the commissioner that charges for energy services are eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges, respectively. If a determination of eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges cannot be ascertained by the commissioner without a survey or the eligible energy user, qualified eligible energy user, or category II on-site cogenerator is not satisfied with the commissioner's determination of such charges, such user may request that the commissioner cause a survey to be conducted by a licensed professional engineer satisfactory to DSBS at such user's expense, of the applicant's usage of energy services. Upon completion of the survey, the professional who prepares such survey shall submit the report, together with a certification as to the amount of eligible charges or eligible public utility service charges to the commissioner for his or her review.

(3) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine those charges that constitute the eligible energy user's, qualified eligible energy user's, or category II on-site cogenerator's eligible charges, eligible public utility service charges, or eligible on-site cogenerator charges to which a special rebate may be applied. If such user disagrees with the commissioner's findings, such user may request an opportunity to be heard in accordance with §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §4, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

126 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 5-14

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-14 Special Rebates.

(a)(1) A utility that sells energy services to an eligible energy user or eligible owner that applied for ECSP benefits after October 31, 2000, shall be required to make a special rebate to such user equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible charges for such energy services.

(2) A utility other than LIPA that sells energy services to an eligible energy user or eligible owner that applied for ECSP benefits prior to November 1, 2000 shall be required to make a special rebate to such user equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-18 of these rules and the eligible charges for such energy services.

(3) A utility that sells energy services to a category II on-site cogenerator shall be required to make a special rebate to such cogenerator equal to the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible on-site cogenerator charges for such energy services.

(b) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible energy user or eligible owner that has been individually approved by such power authority and certified as an eligible energy user or eligible owner pursuant to §22-602(c) of the Code prior to November 1, 2000, NYCPUS shall make such special rebate to such user in the amount or amounts derived by

calculating the full amount of the special rebate to which such eligible energy user or eligible owner would have been entitled pursuant to the schedule contained in §5-18 of these rules for eligible charges relating to the purchase of such energy services had such user purchased such energy services directly from the utility, and subtracting from such full amount the difference between the eligible charges relating to the purchase of such energy services had such eligible energy user or eligible owner purchased the energy services directly from the utility and the eligible public utility service charges relating to the purchase of such energy services actually charged to such eligible energy user by NYCPUS for actual purchases of energy services from NYCPUS; except that (i) in no event shall the amount of such special rebate exceed the amount of the special rebate to which such eligible energy user would have been entitled pursuant to the schedule contained in §5-18 of these rules had such eligible energy user or eligible owner purchased the energy services directly from the utility at the price charged by such utility, and (ii) for any monthly billing period where the calculation of such special rebate results in a negative number, the amount of such special rebate shall be deemed to be zero.

(c)(1) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible energy user or eligible owner that has been individually approved by such power authority, has applied for ECSP benefits after October 31, 2000, NYCPUS shall make such special rebate in the amount of the product of the applicable percentage for special rebates specified in the schedule contained in §5-16 of these rules and the eligible public utility service charges for such energy services.

(2) Where, pursuant to such an agreement, NYCPUS sells energy services to a qualified eligible energy user that has been individually approved by such power authority, applied for ECSP benefits prior to November 1, 2000, regardless of the date of certification, NYCPUS shall make such special rebate in the amount of the product of the applicable percentage for special rebates specified in the schedule contained in §5-18 of these rules and the eligible public utility service charges for such energy services.

(3) A user or owner that applied for ECSP benefits as a qualified eligible energy user before November 1, 2000, but was not certified pursuant to §5-36 of these rules as such prior to such date, may be certified as an eligible energy user after such date and the special rebates to which such user or owner is eligible shall be determined pursuant to §5-18 in accordance with these rules.

(d)(1) A vendor that sells energy services provided by a utility to an eligible energy user, eligible owner, or on-site cogenerator that applied for ECSP benefits after October 31, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage for special rebates specified in the schedule contained in §5-16 of these rules and the eligible charges or eligible on-site cogenerator charges for such sales of energy services made by such vendor.

(2) A vendor that sells energy services provided by a utility to an eligible energy user, eligible owner, or on-site cogenerator that applied for ECSP benefits prior to November 1, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage for special rebates specified in the schedule contained in §5-18 of these rules and the eligible charges or eligible on-site cogenerator charges for such sales of energy services made by such vendor.

(e)(1) A vendor that sells energy services provided by NYCPUS to an eligible energy user or eligible owner that applied for ECSP benefits after October 31, 2000, may elect to provide a special rebate that shall be the product of the applicable percentage specified for special rebates in the schedule contained in §5-16 of these rules and the eligible public utility service charges for sales of energy services made by such vendor.

(2) A vendor that sells energy services provided by NYCPUS to a qualified eligible energy user that was certified pursuant to §22-602(c) of the Code prior to November 1, 2000, or to an eligible energy user or eligible owner that applied for ECSP benefits prior to November 1, 2000 and was certified pursuant to §5-36 of these rules after October 31, 2000 may elect to provide a special rebate that shall be the product of the applicable percentage specified for special rebates in the schedule contained in §5-18 of these rules and the eligible public utility service charges for sales of energy services made by such vendor.

(f)(1) A utility that delivers natural gas to a category I on-site cogenerator that produces electricity for an eligible energy user or eligible owner certified before July 1, 2003, and a utility that delivers natural gas to a clean on-site cogenerator that produces electricity for an eligible energy user and is certified after June 30, 2003, shall be required to make special rebates against the energy bill rendered to such on-site cogenerator by such utility for the sale or delivery, or both, of such gas in the amount or amounts derived by taking the product of 4.44 cents multiplied by an eligibility factor, multiplied by the number of kilowatt hours of electricity produced by such on-site cogenerator and used by such eligible energy user or eligible owner during the billing period, excluding the charges for electricity used for heating any premises, any special charges on such bill, including but not limited to, collection charges, late payment charges, or excess distribution charges, and charges for energy that is resold; where the eligibility factor shall equal 100 percent during the first eight years after initial certification as an eligible energy user, 80 percent during the 9th such year, 60 percent during the 10th such year, 40 percent during the 11th such year and 20 percent during the 12th and final such year, such years to be calculated in accordance with the provisions of §5-19 of these rules. Provided, however, that the number of kilowatt hours of electricity on which the total of the special rebates payable to a clean on-site cogenerator is based in any calendar or fiscal year as specified by the commissioner pursuant to the formula set forth in this paragraph shall not exceed 13,140,000.

(2)(i) A category I on-site cogenerator and a clean on-site cogenerator may be eligible to receive special rebates based on eligible charges for transportation of natural gas that is not used in the production of electricity. If eligible, such special rebate for a category I cogenerator providing electricity to an eligible energy user that applied before November 1, 2000, shall be equal to the product of such eligible charges and the rebate percentage determined in accordance with §5-18. If eligible, such special rebate for a clean on-site cogenerator or a category I on-site cogenerator providing electricity to an eligible energy user that applied after October 31, 2000, shall be equal to the product of such eligible charges and the rebate percentage determined in accordance with §5-16.

(g) Determination of special rebates payable to category I on-site cogenerators and clean on-site cogenerators by the commissioner. (1) The commissioner shall have the authority to determine the information he or she requires to review and determine appropriate special rebates payable under this section. He or she may require electric and/or thermal production to be metered in a reliable manner and that site visits be made to verify meter readings.

(2) A category I on-site co-generator or clean on-site cogenerator has the burden of demonstrating to the commissioner the amount of electricity generated by the cogenerator and the purposes for which such electricity is used. If a determination of such amount or use cannot be made by the commissioner without a survey or such cogenerator is not satisfied with the commissioner's determination, the commissioner may require, or such user may request, that a survey of the applicant's production and usage of energy services be conducted by a person with experience in conducting such surveys satisfactory to DSBS at such user's expense. Upon completion of the survey, the person who prepares such survey shall submit his or her report, together with a certification as to the amount electricity produced and its use to the commissioner for his or her review.

(3) A clean on-site cogenerator shall have the burden of demonstrating to the commissioner that its nitrous oxide emissions will not exceed the emissions threshold described herein. If a determination of such amount or use cannot be made by the commissioner without a survey or such cogenerator is not satisfied with the commissioner's determination, the commissioner may require, or such user may request, that a survey of the applicant's production and usage of energy services be conducted by a person with experience in conducting such surveys satisfactory to DSBS at such user's expense. Upon completion of the survey, the person who prepares such survey shall submit his or her report, together with a certification as to the plant's emissions.

(4) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine the special rebate to which such category I cogenerator or clean on-site cogenerator is entitled. If such user disagrees or with the commissioner's findings, such user may request an opportunity to be heard in accordance with §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §5, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

Subds. (a)-(e) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See Note 1]

Subds. (a)-(e) amended City Record June 18, 2001 eff. July 18, 2001. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 28, 2003:

The new rules implement the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP"). Chapter 472 of the Laws of 2000 revised the ECSP and LMEP so that the special rebate on eligible charges for gas and electricity would be based on "energy services" which include the charges for transmission and distribution of electricity and gas ("delivery costs") and exclude the costs of the commodities of electricity and gas. Prior to the amendments made by Chapter 472, the special rebate was based on "bundled services" which included the costs of both the commodity and delivery. Chapter 472 increased the percentages by which the special rebate is calculated to 45% of eligible charges for energy services related to the delivery of electricity and 35% of eligible charges for energy services related to the delivery of gas and directed that base to which the percentages would apply be reduced to "energy services", **i.e.**; delivery costs.

In July 2001, the rules were revised as follows: Applicants for ECSP and LMEP applying after October 31, 2000, would receive special rebates pursuant to the statutory rates. Applicants that applied before the effective date of Chapter 472 would be divided into two groups, those that qualified before July 1, 2001, and those that qualified after June 30, 2001. The increased percentages for these two groups would be implemented beginning with the first billing cycle after June 1, 2001. For the group that qualified before July 1, 2001, the rules would implement increases that would be equivalent to an increase effective as of November 1, 2000. Thus, the amendments will provide separate schedules of higher rebate percentages that would apply to participants in ECSP and LMEP that were qualified to participate during part or all of the period from the effective date of Chapter 472 to June 30, 2001. Those that applied before the effective date but did not qualify until after June 30, 2001, would be subject to another set of lower percentages that would approximate equivalency with historic levels of program benefits but would not implement a retroactive adjustment to the effective date of Chapter 472.

The revision herein will further the statutory goals of these programs by: (1) revising the percentages for those companies that applied prior to November 1, 2000 to reflect currently projected energy costs so that their benefits will be approximately equivalent with the historic levels of program benefits; and (2) eliminating the higher rebate percentages that were made applicable to companies that applied prior to November 1, 2000 and were qualified prior to July 1, 2001 because those companies have now received benefits that fully compensate them, **viz.**, the benefits they have received are equivalent to what they would have received if the July 1, 2001 increases had been implemented as of November 1, 2000.

One change has been made since these rules were proposed. During preparation of the revised rules, the base rebate percentages applicable to gas consumers served under KeySpan's service classification 6 (rates 1 and 2) were miscalculated as a result of a typographical error. The intent was to calculate the base rebate percentage for these customers by determining the rebate on transportation charges that would have approximated a 20% discount on combined commodity and transportation charges, based on transportation and commodity prices in effect for the 12 months preceding the 2002/3 heating season. The actual calculations inadvertently overstated the pre-2002/3 heating season commodity prices by failing to deduct the transportation charges from the full-service rate (i.e., combined commodity and transportation charges) to determine commodity prices. Using the correct commodity prices reduces the

applicable base rebate percentages for service classification 6 customers served under rate 1 from 71% to 51% and those served under rate 2 from 72% to 52%.

2. Statement of Basis and Purpose in City Record June 18, 2001: Chapter 472 of the Laws of 2000 revised the Energy Cost Savings Program ("ECSP") and the Lower Manhattan Energy Program ("LMEP") to that the special rebate on eligible charges for gas and electricity would be based on "energy services" which include the charges for transmission and distribution of electricity and gas and exclude the costs of the commodities of electricity and gas. Prior to the amendments made by Chapter 472, the special rebate was based on "bundled services" which included the costs of both the commodity and delivery. Chapter 472 increased the percentages by which the special rebate is calculated to 45% of eligible charges for energy services related to the delivery of electricity and 35% of eligible charges for energy services related to the delivery of gas and directed that base to which the percentages would apply be reduced to "energy services", from which the commodity costs are excluded. Applicants for ECSP and LMEP applying after October 31, 2000 would receive special rebates pursuant to the statutory rates. Applicants that applied before the effective date of Chapter 472 would be divided into two groups, those that qualified before July 1, 2001, and those that qualified after June 30, 2001. The increased percentages for these two groups would be implemented beginning with the first billing cycle after June 1, 2001. For the group that qualified before July 1, 2001, the rules would implement increases that would be equivalent to an increase effective as of November 1, 2000. Thus, the proposed amendments would provide separate schedules of higher rebate percentages that would apply to participants in ECSP and LMEP that were qualified to participate during part or all of the period from the effective date of Chapter 472 to June 30, 2001. Those that applied before the effective date but did not qualify until after June 30, 2001, would be subject to another set of lower percentages that would approximate equivalency with historic levels of program benefits but would not implement a retroactive adjustment to the effective date of Chapter 472.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-15

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-15 Discounts.

(a) A utility that sells energy services to a vendor of energy services shall be required to make a discount to such vendor in an amount equal to the sum of the special rebates certified to such utility by such vendor as having been made by such vendor to eligible energy users and eligible owners in accordance with §5-14 of these rules.

(b) A utility that sells energy services to a public utility service shall be required to make a discount to such public utility service in an amount equal to the sum of the special rebates and discounts certified to such utility by such public utility service as having been made by such public utility service in accordance with §5-14 of these rules.

(c) NYCPUS shall be required to make a discount to a vendor to which it sells energy services equal to the sum of the special rebates certified to NYCPUS by such vendor as having been made by such vendor to eligible energy users, eligible owners or qualified eligible energy users to which such vendor of energy services has resold such energy.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-16

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-16 Table of Percentages Applicable to the Calculation of Special Rebates for Users that Applied for ECSP Benefits After October 31, 2000.

Schedule of Special Rebates

Months During Benefit Period	Applicable % for Natural Gas	Applicable % for Electricity
First through ninety-sixty	35%	45%
Ninety-seventh through one hundred eighth	28%	36%
One hundred ninth through one hundred twentieth	21%	27%
One hundred twenty-first through one hundred thirty-second	14%	18%
One hundred thirty-third through one hundred forty-fourth	7%	9%

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

3

[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-17

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-17 Special Rebates for Those that Applied for ECSP Benefits Prior to November 1, 2000 and are Certified Prior to July 1, 2001. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section added City Record June 18, 2001 eff. July 18, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-18

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-18 Special Rebates for Those that Applied for ECSP Benefits Prior to November 1, 2000.

(a) Paragraph (4) of subdivision (a) of §22-602 of the code states that the commissioner may increase the applicable percentages set forth in §5-16 of these rules "in order to maintain the special rebate at levels comparable to those historically provided under the program, pursuant to rules that are generally applicable to distinct classes of energy users." In accordance with this provision, the percentages set forth in §5-18(b) of these rules shall be applicable to the calculations of special rebates for all eligible energy users, eligible owners, and qualified eligible energy users that applied for ECSP benefits prior to November 1, 2000. These percentages shall be in place from the first billing cycle beginning on or after April 30, 2003.

(b) For all billing cycles prior to the ninety-seventh month of each of the above-noted eligible energy user's, eligible owner's and qualified eligible energy user's benefit period occurring during the period beginning on or after April 30, 2003, each such user shall receive rebates on eligible charges as specified in this paragraph; provided that the applicable rebate percentages shall not, for any affected electric or natural gas account, exceed 100% of the eligible charges or eligible public utility service charges charged in any billing cycle.

(1) The rebate percentage to be applied to eligible charges for electrical-related energy services provided by Con Edison pursuant to its "PSC No. 9-Electricity Rate Schedule" or "PSC No. 2-Retail Access Rate Schedule" shall equal the percentages specified in Attachment A of Appendix A to these rules, which shall vary depending on such user's average monthly load factor, applicable service classification and the applicable rate, and whether such user receives

discounts on service pursuant to a service rider. If, for any affected user, eligible charges for electrical-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification, the rebate percentages specified in Attachment A of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such user. To the extent that any user is served under Con Edison's "PSC No. 9-Electricity Rate Schedule" its rebate percentages shall be determined as if such user were served under Con Edison's PSC No. 2-Retail Access Rate Schedule.

(2) The rebate percentage to be applied to eligible charges for natural gas-related energy services provided by Con Edison pursuant to its "PSC No. 9-Gas Rate Schedule" shall equal the percentages specified in Attachment C of Appendix A to these rules, which shall vary depending on such user's average monthly consumption, applicable service classification and the applicable rate, and whether such user receives discounts on energy services rates pursuant to a service rider or other tariff provision. If, for any affected user, eligible charges for natural gas-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment C of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such user. To the extent that such user is served under "PSC No. 9-Gas Rate Schedule," its rebate percentages shall be determined as if such user were served under the corresponding full-service rate and service classification and rate.

(3)(A) Except as otherwise provided in subparagraph (B) of this paragraph (3), the rebate percentage to be applied to eligible charges for natural gas-related energy services provided by Keyspan pursuant to its "PSC No. 12-Gas Rate Schedule" shall equal the percentages specified in Attachment D of Appendix A to these rules, which shall vary depending on the user's average monthly consumption, the applicable service classification and the applicable rate, and whether the user receives discounts on energy services rates pursuant to a service rider or other tariff provisions. If, for any affected user, eligible charges for natural gas-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment D of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider or other tariff discount applies to such user.

(B) The special rebate levels applicable, pursuant to this paragraph (3), to eligible charges for energy services procured by an eligible energy user from KeySpan pursuant to service classification 4A (High Load Factor service) of its "PSC No. 12-Natural Gas Rate Schedule" shall be increased during the period beginning on or after April 30, 2003 and ending no later than October 31, 2004, by the amounts set forth in Schedule D-1 of Appendix A of these rules, depending on the user's average monthly consumption, for all eligible energy users that applied for ECSP benefits prior to November 1, 2000 and were certified before February 1, 2001.

The special rebate levels applicable, pursuant to this paragraph (3), to eligible charges for energy services procured by an eligible energy user from KeySpan pursuant to service classification 4A (High Load Factor service) of its "PSC No. 12-Natural Gas Rate Schedule" shall be increased during the period beginning on April 30, 2003 and ending no later than October 31, 2004, by the amount equal to half the amount set forth in such Schedule D-1, depending on the user's average monthly consumption, for all eligible energy users that applied for ECSP benefits prior to November 1, 2000 and were certified during the period beginning on or after January 31, 2001 and ending on or before September 30, 2002.

(4) The rebate percentage to be applied to eligible public utility service charges for electrical-related energy services provided by NYCPUS pursuant to its "Service Tariff No. 4 Rate Schedule" shall equal the percentages specified in Attachment B of Appendix A to these rules, which shall vary depending on the user's average monthly load factor, the applicable service classification and the applicable rate, and whether the user receives discounts on service pursuant to a service rider. If, for any affected user, eligible public utility service charges for electrical-related energy services were rendered at more than one service classification and/or at more than one rate for a service classification,

the rebate percentages specified in Attachment B of Appendix A to these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to the user.

(5) The rebate percentage to be applied to eligible charges for natural gas-related energy services provided by a local distribution utility pursuant to an individually-negotiated natural gas sales contract entered into prior to November 1, 2001 and having a transportation price of less than $1.50 per dekatherm, shall be 100%.

(6) The rebate percentage to be applied to eligible charges for energy services provided by LIPA to an eligible energy user or eligible owner that applied for ECSP benefits before November 11, 2000 shall be 49% to the extent services are received through the Power for Jobs program and 57% to the extent energy services are provided by LIPA under its other commercial rates.

(c) For all billing cycles after the ninety-sixth month of each of the above-noted user's benefit period and thereafter during the period beginning with the first billing cycle following June 1, 2001, the applicable rebate percentages on eligible charges, determined as specified in §5-18(b) of these rules, shall be multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected electric or natural gas account, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period	Adjustment Factor
97 through 108	0.8
109 through 120	0.6
121 through 132	0.4
133 through 144	0.2
145 and thereafter	0.0

HISTORICAL NOTE

Section amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Section added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Subd. (b) par (6) added City Record June 25, 2004 §6, eff. July 25, 2004. [See T66 §5-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to

be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.
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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-19

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER B ELIGIBILITY CRITERIA AND THE DETERMINATION OF THE SPECIAL REBATE*3

§5-19 Benefit Period.

(a) Except as set forth in (b) of this §5-19, all recipients shall be eligible to receive a special rebate for a period not to exceed one hundred and forty-four (144) consecutive months commencing at the beginning of the month immediately following the effective date of their certificate of eligibility.

(b) A recipient that occupies premises within specially eligible premises after the effective date on which an initial certificate of eligibility of the first eligible energy user occupying such premises is eligible to receive a special rebate for the remaining portion of the benefit period prescribed in such certificate of eligibility for such premises.

HISTORICAL NOTE

Section designated and amended (former §5-18) City Record June 25, 2004 §7, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added (as §5-18) City Record Jan. 9, 2001 eff. Feb. 8, 2001. (Section redesignated by Law Department per Charter §1045(b)). [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

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[Footnote 3]: * Subchapter heading amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Rules of the City of New York

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

66 RCNY 5-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-21 Granting of Special Rebates to Eligible Energy Users, Eligible Owners, Qualified Eligible Energy Users and On-Site Cogenerators.

(a)(1) A utility and NYCPUS shall reduce their monthly bills for energy services to eligible energy users, eligible owners, qualified eligible energy users and on-site cogenerators that are eligible to receive a special rebate pursuant to §5-14 of these rules during their respective benefit periods by the applicable special rebate calculated in accordance with such §5-14.

(2) A utility and NYCPUS shall commence reducing each such monthly bill in accordance with this subdivision (a) of this §5-21 within thirty (30) days of receipt of the executed certificate of eligibility, or upon the effective date of the certificate of eligibility, whichever is later. The special rebate provided by a utility or public utility service shall be separately stated and shown on each such bill.

(b)(1) A vendor that elects to provide an eligible energy user, eligible owner or qualified eligible energy user with special rebates pursuant to §5-14 of these rules shall provide such user or owner with a monthly bill for submetered energy services reduced during its benefit period by the applicable special rebate calculated in accordance with such §5-14.

(2) Such vendor shall commence reducing each such monthly submetered bill for energy services upon the effective date of the certificate of eligibility by the full amount of the special rebate that is calculated in accordance with

the applicable provisions of §5-14 of these rules. The special rebate shall be provided to such eligible energy user, eligible owner or qualified eligible energy user by the vendor on a monthly basis during the benefit period and such amount shall be separately stated and shown on each bill.

(3) Such eligible energy user, eligible owner or qualified eligible energy user, upon receipt of its reduced bill from the vendor, must remit payment in accordance with the written agreement between such user or owner and such vendor together with an executed remittance form, in accordance with §5-22 of these rules, setting forth the dollar amount of the special rebate such user or owner has received from its vendor for the applicable monthly billing cycle.

(4) The vendor shall execute and forward the remittance form to the utility or NYCPUS, whichever entity supplied such vendor with energy services, together with payment for the balance of the bill for such energy services in order to receive a discount from the utility or NYCPUS. The amount on such remittance form shall be credited on its bill for the monthly billing cycle during which the special rebate was made to the eligible energy user, eligible owner or qualified eligible energy user, or for such subsequent monthly billing cycle where payment by the vendor to the utility or NYCPUS was not timely made.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-22 Remittance Form.

(a) Where special rebates are provided by a vendor of energy services, a remittance form, which shall be a form approved by the commissioner, shall be signed by the recipient and the vendor, submitted to the utility or NYCPUS, and the commissioner, and shall include, but not be limited to, the following information:

(1) the name of the recipient who receives submetered energy services;

(2) the vendor's utility or NYCPUS customer account name;

(3) the vendor's utility or NYCPUS customer account number;

(4) the amount of the special rebate granted by the vendor to a recipient for the billing period covered by the remittance form;

(5) the amount of the recipient's eligible charges for the applicable billing period;

(6) the billing period for which the recipient has received a special rebate from a vendor;

(7) the recipient's certificate of eligibility number and effective date;

(8) the schedule of special rebates the recipient may receive for the benefit period pursuant to Subchapter B of these rules;

(9) the amount of any additional fee charged by the vendor pursuant to paragraph 5-11(f)(ii) of these rules;

(10) such other information as may be requested by the commissioner.

(b) Remittance forms submitted in accordance with subdivision (a) of this section must be submitted to the commissioner within ninety (90) days of the closing meter reading date for which special rebates are sought. The commissioner may decline to approve a discount to a vendor of energy services based on submissions received after the expiration of such period.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §8, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-22.1

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-22.1 Cogenerator Credit Form.

(a) A cogenerator credit form shall consist of a form approved by the commissioner.

(b) A category I or clean on-site cogenerator shall submit a cogenerator credit form to the commissioner and to the utility within ninety (90) days of the end of the billing period for which special rebates are sought.

HISTORICAL NOTE

Section added City Record June 25, 2004 §9, eff. July 25, 2004. [See T66 §5-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by

the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-23

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-23 Granting of Discount to Vendors.

(a) Vendors that have granted special rebates to eligible energy user or eligible owners in accordance with §5-14 of these rules, shall submit executed remittance forms to the utility or NYCPUS, as applicable. Each remittance form shall be limited to a single monthly billing cycle.

(b) A utility or NYCPUS shall grant a discount to a vendor equal to the monthly aggregate amount of all remittance forms reflecting special rebates granted by a vendor to eligible energy user, eligible owners or qualified eligible energy users in accordance with §5-15 of these rules, provided, however, that the discount granted by the utility or NYCPUS shall not exceed the bill(s) for the energy services supplied to such vendor by such utility or NYCPUS, respectively. At no time shall a utility or NYCPUS be required to carry forward on its books and records any discounts not fully made to a vendor to reduce bills for subsequent billing cycles.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-24

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-24 Granting of Discounts to NYCPUS.

(a) A utility shall provide NYCPUS with a discount against its monthly bill upon proper and timely submission of executed remittance forms to the utility. Each remittance form shall be limited to a single monthly billing cycle.

(b) The utility shall grant a discount to NYCPUS equal to the monthly aggregate amount of all remittance forms reflecting special rebates granted by NYCPUS to eligible energy users, eligible owners or qualified eligible energy users in accordance with §5-15 of these rules and discounts granted to vendors that, in turn, granted special rebates to eligible energy users, eligible owners or qualified eligible energy users in accordance with §5-14 of these rules, provided, however, that the discount granted by the utility shall not be in an amount that exceeds the bill(s) for energy services supplied to NYCPUS by such utility. At no time shall a utility be required to carry forward on its books and records any discounts not fully made to NYCPUS to reduce bills for subsequent billing cycles.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-25

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER C METHOD OF GRANTING SPECIAL REBATES, UTILITY CREDITS AND/OR DISCOUNTS

§5-25 Granting of Utility Credit to Utilities; Audit.

(a) Utilities that have granted special rebates to eligible energy users, eligible owners or on-site cogenerators in accordance with §5-14 of these rules or discounts to vendors or NYCPUS in accordance with §5-15 of these rules shall be entitled to a utility credit equal to the aggregate amount of all such special rebates and discounts it has provided to eligible energy users, eligible owners, qualified eligible energy users, on-site cogenerators, vendors and/or NYCPUS, whichever is applicable.

(b) Such utility credit may be taken only as provided for in the code, these rules and the rules promulgated by the commissioner of DOF, for the purpose of permitting utilities a deduction against certain taxes.

(c) The utility credit to which utility is entitled under ECSP will be provided by DOF in accordance with rules promulgated by the commissioner of DOF.

(d) DOF may audit, among other things, the utility credit taken by a utility to offset the special rebates and discounts such utility granted under ECSP to recipients, vendors and NYCPUS.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-31

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-31 Forms and Filing of Application.

(a) All application forms may be obtained from DBS and, upon completion, shall be submitted to DBS. Only completed applications shall be considered by DBS in determining the applicant's eligibility, or ineligibility, under the Act and these rules.

(b) A check for the non-refundable application filing fee specified in §5-34 of these rules shall be submitted by the applicant to the commissioner together with an executed original copy of the application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-32

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-32 Submission of an Application.

(a) An applicant that applies after the effective date of these rules must comply with the following application procedures to be considered for eligibility under ECSP:

(1) An applicant that is relocating to premises that may qualify as replacement premises must file an application prior to taking occupancy of such premises or the signing of a lease or contract of sale for such premises, whichever is earlier (except in the case of a contract of sale entered into subject to the approval of public or private financing).

(2) An applicant that owns and occupies, manages or operates real property or a building that may qualify as specially eligible premises must file an application within the following time constraints, whichever is applicable:

(i) prior to the approval of an inducement resolution by IDA to finance in whole or in part an applicant's IDA project; or

(ii) prior to the signing of a lease approved by UDC or by the City in accordance with the applicable Charter provisions for premises contained on or within real property owned by the City or UDC; or

(iii) after the filing of a preliminary application or final application with DOF for construction or renovation in connection with an ICIP project eligible to obtain ICIP benefits from DOF.

(3) An applicant that is occupying premises within a building that it does not own, operate or manage and which building is the subject of an application for an initial certificate of eligibility as specially eligible premises must file an application within one hundred twenty (120) days of the effective date of the initial certificate of eligibility for such building to obtain a certificate of eligibility for such premises.

(4) An applicant that takes occupancy of premises within a building that has previously qualified as specially eligible premises must file an application within one hundred twenty (120) days of taking occupancy of such premises, or of the signing of a lease or contract of sale for such premises, whichever is earlier.

(5) No applicant shall be certified as eligible more than 5 years after the initial submission by such applicant pursuant to paragraphs (1) or (2) of subdivision (a) of this section, except where the approval of the application has been delayed by the actions or inactions of the City of New York and/or the applicant demonstrates to the commissioner that it has made substantial progress toward obtaining certification. An applicant that cannot make such demonstration will be given the opportunity to renew its application by updating its application with current information and by paying a new application fee according to the fee schedule currently in effect.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §10, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-33

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-33 Contents of Application.

(a) The applicant shall have the affirmative burden of proving its eligibility to the satisfaction of the commissioner as to each and every fact contained in the application. The applicant shall provide DSBS with all information required in the application and deemed necessary or useful for the administration of ECSP, including but not limited to, the following:

(1) applicant's name; telephone number; address at its current and previously occupied premises, where applicable; employer identification number; name of utility and utility customer number at the eligible premises, if available, and for the previously occupied premises, where applicable; number of present employees to be relocated or located at the eligible premises; length of time at the previously occupied premises, where applicable; names and addresses of any parent, subsidiaries, or affiliated companies; and the name and title of an individual authorized to complete the application on behalf of the applicant; and

(2) a lease, contract of sale or deed for the eligible premises, whichever is applicable; copies of utility bills for the previously occupied premises and the eligible premises, where applicable; federal and state tax returns, as may be requested by the commissioner to verify among other things, occupancy at the eligible premises and the previously occupied premises, where applicable;

(3) any other information, documentary or otherwise, including, but not limited to, sworn statements and other

data, that the commissioner deems relevant to evaluate the applicant's application; and

(4) a sworn statement agreeing to return all special rebates in excess of $10,000 per employee received during any calendar year, with interest calculated at the prime rate as specified in The New York Times published on the last day of that calendar year, compounded monthly.

(b) In addition to the requirements of subdivision (a) of this §5-33, an applicant that purchases energy services from a vendor shall submit as part of its application in form and substance satisfactory to the commissioner, the following:

(1) a written contract or lease agreement between the applicant and the vendor setting forth an agreement by such vendor to provide individual and accurate submetering of the applicant's premises, and stating as conditions for the sale of energy services from such vendor to the applicant that:

(i) the applicant will be separately billed for its usage of energy services; and

(ii) the price charged by such vendor for such energy services, electricity and/or natural gas, shall not exceed the limits set forth in §5-11(f)(ii) of these rules; and

(2) a written confirmation by such applicant's vendor to the commissioner stating the vendor's agreement to participate in ECSP by providing a special rebate to the applicant and by complying with the terms of the agreement referred to in paragraph (b)(1) of this §5-33. Pursuant to such written confirmation, the vendor shall agree to provide separate monthly bills to the applicant itemizing all charges for energy services consumed and separately state the applicable ECSP benefit.

(c) In addition to the requirements of subdivision (a) and (b) of this section, an applicant seeking to be certified as a clean on-sight cogenerator shall provide evidence, acceptable to the commissioner, that the electricity generating facility seeking certification has an emission rate for nitrous oxides required of clean on-site cogenerators.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §11, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-34

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-34 Application Filing Fee.

(a) For commercial buildings seeking designation as a specially eligible premises and commercial firms qualifying for ECSP by virtue of a relocation, the application fee shall be determined as set forth below:

Gross Square Footage of Applicant's Premises	Fee
Less than 10,000 square feet	$500
10,001 to 25,000 square feet	$1,000
25,001 to 50,000 square feet	$1,250
50,001 to 100,000 square feet	$1,500
100,001 to 250,000 square feet	$2,500
Over 250,000 square feet	$5,000

In the case of an eligible owner (for example, a landlord) applying for ECSP benefits for a building, gross square footage for purposes of the filing fee is limited to square footage that is not or will not be occupied by tenants (i.e., common areas, equipment rooms etc.).

(b) In addition to the filing fee, an applicant shall pay for all costs incurred as a result of any survey conducted by or at the request of the commissioner to develop or verify any factual matters relating to the application.

(c) All fees shall be made payable by check or money order to the "New York City Department of Small Business

Services".

HISTORICAL NOTE

Section amended City Record June 25, 2004 §12, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

142 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 5-35

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-35 Representations and Warranties.

(a) As part of the application and reports required by the Act or these rules, the applicant shall certify and make such representations and warranties as may, from time to time, be deemed necessary to ensure compliance with the provisions of all applicable laws and these rules, including, but not limited to, the following:

(1) that all statements made by or on behalf of the applicant in connection with the application are made by a person authorized by the applicant to make such statements and having actual knowledge or documentary information sufficient to make informed and accurate statements, and that such person believes all such statements to be true;

(2) that the applicant and its employees and agents will comply with and be in compliance with all provisions of federal, state and local laws, all local rules and executive orders, and these rules;

(3) that the applicant is applying for a special rebate only to the extent described in the application and permitted by the Act and these rules;

(4) That the applicant represents, acknowledges, covenants and agrees that it bears sole responsibility for paying the full amount of energy services costs to the appropriate utility, vendor or NYCPUS until such time as the special rebate (if any) granted to the applicant under ECSP is reflected on the applicant's bill;

(5) that the applicant agrees to permit or cause permission to be granted to the City and its agents to inspect its premises and, in the case of an applicant relocating to replacement premises, the premises from which such applicant is relocating, upon notice during regular business hours; and

(6) any other representations or warranties as may be required in the application or requested by the commissioner.

(b) In addition to the requirements of subdivision (a) of this §5-35, the applicant shall covenant and agree to repay with interest at the prime rate, as reported in The New York Times (or similar periodical selected by the commissioner), on the effective date of its certificate of eligibility accrued from the date of receipt, the full amount of any special rebate that the applicant has received if subsequently it is determined by the commissioner that the applicant was ineligible to receive a special rebate for any reason.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-36

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER D APPLICATIONS

§5-36 Commissioner's Review; Certification of Eligibility Procedure.

(a) The commissioner shall review the application and grant or deny an applicant's application for a certificate of eligibility.

(b) The commissioner shall consider the application submitted with supporting documentation, and any surveys conducted, and any other information pertaining to the application.

(c) The commissioner shall execute and provide a certificate of eligibility to eligible applicants in accordance with Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

144 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 5-41

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-41 Notification to Applicant.

If the commissioner grants an applicant's application for a certificate of eligibility, his or her staff shall forward an executed certificate of eligibility to the applicant. If the commissioner denies an applicant's application for a certificate of eligibility, the commissioner shall promptly notify the applicant in writing, of the reason for such denial.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General

City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-42

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-42 Certificate of Eligibility.

(a) The commissioner's staff will coordinate with the recipient, the utility, the vendor, NYCPUS and DOF, where applicable, to establish the effective date of the certificate of eligibility, which shall in no event be on or after July 1, 2005.

(b) The certificate of eligibility shall include the following information:

(1) the benefit period the recipient is qualified for;

(2) the special rebate a recipient is qualified for;

(3) its date of issuance;

(4) its effective date; and

(5) its termination date.

(c) An applicant must execute the certificate of eligibility and return it to the commissioner within six (6) months of the issuance date stated on the certificate of eligibility or before July 1, 2005, whichever is earlier. Failure of the

applicant to comply with this subsection may result in a revocation of the certificate of eligibility.

(d) Subsequent to establishing the effective date of the certificate of eligibility, the commissioner's staff shall affix such date to the applicant's certificate of eligibility and forward a copy of the fully completed and executed certificate of eligibility to the applicant and any other necessary party.

(e) The effective date of a certificate of eligibility issued by the commissioner after June 30, 2003, and before July 1, 2005, to an on-site cogenerator serving an eligible energy user that was certified before July 1, 2003 shall be the effective date of the first certificate of eligibility issued to such eligible energy user.

(f) The commissioner is authorized to certify an applicant as an on-site cogenerator as of a date prior to July 1, 2003, regardless of the date of such applicant's application for certification, provided the applicant demonstrates to the satisfaction of the commissioner that the applicant had fulfilled all eligibility and filing requirements prior to July 1, 2003, and was not certified prior to such date due to the actions or inaction of the City.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §13, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-43

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-43 Notification to Utilities, Vendors and/or NYCPUS.

(a) DBS shall notify the utility, the vendor, and/or NYCPUS, whichever is appropriate, of an applicant's eligibility to receive a special rebate by forwarding to them a certified copy of an applicant's certificate of eligibility executed in accordance with §5-52 of these rules.

(b) DBS shall notify, in writing, the utility, the vendor and/or NYCPUS, whichever is appropriate, of any changes in an applicant's certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-44

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-44 Reporting and Inspection Requirements.

(a) During the term of the benefit period, a recipient shall promptly notify the commissioner of any material changes that may affect a recipient's eligibility under ECSP, including but not limited to changes in: (1) the use or type of operations conducted at the eligible premises; (2) recipient's energy usage; (3) the type of metering or method of billing for energy usage at the eligible premises; (4) the occupancy and/or ownership of the eligible premises including, without limitation, the entering into of any leases or subleases at such eligible premises; (5) the number of employees performing work for the recipient and its affiliates or other persons at the premises during each month of the preceding twelve month period.

(b) During the term of the benefit period, a recipient shall annually submit to the commissioner a reporting form, within thirty (30) days of the end of each calendar year, to document the current status of the recipient's continued eligibility under ECSP. Failure of a recipient to submit the annual reporting form may result in the commissioner's discontinuance of the recipient's special rebate.

(c) The commissioner may require a recipient to submit such supporting documentation, including payroll, unemployment insurance filings and the like, as may be needed to verify the accuracy of the submissions of recipients in accordance with subdivision (a) of this section and carry out the purpose and functions of ECSP.

(d) Information received by the commissioner pursuant to this section or otherwise may be used by him or her to determine that a recipient does not satisfy the applicable eligibility criteria in the act or these rules. The commissioner may, among other things, suspend a recipient's certificate of eligibility until a final determination of eligibility can be made, or revise, terminate or revoke such recipient's certificate of eligibility, on the basis of such information or failure to submit requested information.

(e) During the term of the benefit period, a clean on-site cogenerator shall annually submit to the commissioner a report of its nitrous oxide emissions, thermal output used productively, and electric output used by eligible energy users, on a form approved by the commissioner, within thirty (30) days of the end of each calendar year, to document such cogenerator's continued eligibility under ECSP as a clean on-site cogenerators. Failure of an on-site cogenerator to submit such annual emissions reporting form may result in the discontinuance or reduction by the commissioner of the recipient's special rebate. In addition, users shall repay any special rebates received in excess of $10,000 per employee in any calendar year, within ninety (90) days of receiving a written request from the commissioner.

(f) The commissioner and his or her designated agents shall have the right to inspect any premises and operations for which an applicant claims special rebates to verify compliance with the statutes and rules governing the Energy Cost Savings Program, including emissions and space heating restrictions.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §14, eff. July 25, 2004. [See T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-45

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-45 Requests for an Opportunity to be Heard.

Within thirty (30) days after the mailing of a written determination by the commissioner or his or her designee pursuant to the Act or these rules, an applicant or recipient that wants to contest such determination may submit documentation supporting its position to the commissioner or his or her designee and may request an opportunity to be heard.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy

program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-46

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-46 Opportunity to be Heard.

If an opportunity to be heard is requested in accordance with §5-45 of these rules, the commissioner or his or her designee shall, within a reasonable period of time, review the application, all supporting documentation relating to the application and the documentation submitted by the applicant or recipient relating to the determination and schedule a date for a meeting with such applicant or recipient. At such meeting the applicant or recipient may present its arguments and discuss its supporting documentation with the commissioner or his or her representative.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and

Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-47

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

SUBCHAPTER E NOTIFICATION OF ELIGIBILITY, COMMENCEMENT OF ELIGIBILITY AND OPPORTUNITIES TO BE HEARD

§5-47 Final Determination; Notification.

(a) After review of the documentation and arguments submitted by the applicant or recipient the commissioner or his or her designee shall make a final agency deter- mination.

(b) The commissioner or his or her designee shall notify the applicant or recipient in writing within a reasonable period of time of his or her final determination on the issue or issues presented by such applicant or recipient pursuant to §5-46 of these rules.

(c) The commissioner or his or her designee shall notify the applicant or recipient, the appropriate utility, NYCPUS, the vendor and DOF, whichever is applicable, of a final determination to issue, deny, revise, suspend or revoke a certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001. [See Chapter 5 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5*1 NEW YORK CITY ENERGY COST SAVINGS PROGRAM

APPENDIX A RATE SCHEDULES

APPENDIX A RATE SCHEDULES

ATTACHMENT A

CON EDISON ELECTRIC SERVICE

PSC No. 2 Retail Access Rate Schedule and PSC No. 9 Electric Rate Schedule

	Low Tension Service													
	SC2 and SC2-RA				SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider O)	
	Rate I		Rate II		Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider L Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor														
Less than 20%	60%	63%	72%	76%	60%	88%	86%	66%	57%	75%	81%	53%	66%	66%
20% to 30%	60%	63%	72%	76%	65%	94%	71%	71%	62%	84%	91%	58%	73%	73%
31% to 40%	60%	63%	72%	76%	68%	99%	74%	74%	67%	92%	99%	63%	79%	79%
41% to 50%	60%	63%	72%	76%	71%	100%	77%	77%	71%	99%	100%	68%	85%	85%
51% to 60%	60%	63%	72%	76%	73%	100%	79%	79%	76%	100%	100%	72%	92%	91%
61% to 70%	60%	63%	72%	76%	75%	100%	81%	81%	80%	100%	100%	76%	98%	98%
Greater than 70%	60%	63%	72%	76%	77%	100%	82%	82%	84%	100%	100%	79%	100%	100%

	High Tension Service									
	SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider O)	
	Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider N Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor										
Less than 20%	68%	97%	75%	75%	70%	91%	97%	64%	72%	91%
20% to 30%	73%	100%	79%	79%	77%	100%	100%	71%	79%	100%
31% to 40%	76%	100%	82%	82%	83%	100%	100%	77%	86%	100%
41% to 50%	79%	100%	85%	85%	89%	100%	100%	82%	93%	100%
51% to 60%	81%	100%	87%	87%	95%	100%	100%	88%	100%	100%
61% to 70%	83%	100%	88%	88%	99%	100%	100%	92%	100%	100%
Greater than 70%	85%	100%	90%	90%	100%	100%	100%	97%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT B

NEW YORK CITY PUBLIC UTILITY SERVICE

ELECTRIC SERVICE

Service Tariff No. 4

	Low Tension						High Tension					
	Rate I			Rate II			Rate I			Rate II		
	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount
Average Monthly Load Factor												
Less than 20%	59%	57%	57%	58%	56%	56%	62%	60%	60%	79%	76%	76%
20% to 30%	63%	60%	60%	62%	60%	60%	66%	64%	64%	86%	82%	82%
31% to 40%	67%	64%	64%	66%	63%	63%	70%	67%	67%	92%	88%	88%
41% to 50%	70%	67%	67%	69%	66%	66%	74%	71%	71%	98%	93%	93%
51% to 60%	74%	71%	71%	73%	70%	70%	79%	75%	75%	100%	99%	99%
61% to 70%	78%	74%	74%	76%	73%	73%	83%	79%	79%	100%	100%	100%
Greater than 70%	81%	78%	78%	80%	76%	76%	87%	82%	82%	100%	100%	100%

HISTORICAL NOTE

Attachment added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

ATTACHMENT C

CON EDISON NATURAL GAS SERVICE

PSC No. 9 Gas Rate Schedule

	Firm Service							Interruptible Service				
	SC2 (and SC9) [1]							SC12 (and SC9) [2]				
	Rate I			Rate II			A/C Rate	Priority AB	Priority C	Priority D	Priority E	Off-Peak Firm
	Standard Rate	Rider E Area Development Rate	Rider F Business Incentive Rate	Standard Rate	Rider E Area Development Rate	Rider F Business Incentive Rate						
Average Monthly Consumption												
100 therms or less	36%	36%	36%	36%	36%	36%	66%	37%	44%	56%	57%	93%
101 to 500	45%	49%	49%	43%	47%	47%	66%	37%	44%	56%	57%	93%
501 to 1,000	46%	54%	54%	44%	52%	52%	66%	37%	44%	56%	57%	93%
1,001 to 2,250	48%	59%	59%	45%	55%	55%	69%	37%	44%	56%	57%	93%
2,251 to 5,000	52%	71%	71%	49%	66%	66%	72%	37%	44%	56%	57%	93%
5,001 to 10,000	57%	83%	83%	53%	78%	78%	73%	37%	44%	56%	57%	93%
10,001 to 20,000	59%	93%	93%	56%	86%	86%	73%	37%	44%	56%	57%	93%
20,000 to 50,000	61%	100%	100%	58%	93%	93%	74%	37%	44%	56%	57%	93%
50,001 to 100,000	62%	100%	100%	58%	95%	95%	74%	37%	44%	56%	57%	93%
100,000 to 1,000,000	62%	100%	100%	59%	97%	97%	74%	37%	44%	56%	57%	93%
Greater than 1,000,000	62%	100%	100%	59%	97%	97%	74%	37%	44%	56%	57%	93%

Note:

1. Service Classification no. 2 customers and customers that would be classified as service classification no. 2, but are purchasing only transportation services pursuant to service classification no. 9 rates.

2. Service Classification no. 12 (temperature controlled) customers and customers that would be classified as service classification no. 12, but are purchasing transportation services only pursuant to service classification no. 9.

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT D

KEYSPAN NATURAL GAS SERVICE

PSC No. 12 Gas Rate Schedule

	Firm Service								Interruptible Service		
	SC2						SC4A	SC4B	SC7	SC6	
	Rate Schedule 1			Rate Schedule 2			High Load Factor	A/C Rate		RS1	RS2
	Standard Rate	Business Incentive Rate	Area Development Rate	Standard Rate	Business Incentive Rate	Area Development Rate					
Average Monthly Consumption											
100 therms or less	36%	36%	36%	38%	41%	40%	35%	35%	35%	51% ~~71%~~	52% ~~72%~~
101 to 500	40%	51%	47%	48%	57%	52%	42%	37%	41%	51% ~~71%~~	52% ~~72%~~
501 to 1,000	42%	59%	52%	50%	68%	59%	49%	39%	43%	51% ~~71%~~	52% ~~72%~~
1,001 to 2,250	46%	70%	60%	51%	76%	65%	55%	41%	44%	51% ~~71%~~	52% ~~72%~~
2,251 to 5,000	49%	76%	64%	52%	81%	67%	58%	42%	45%	51% ~~71%~~	52% ~~72%~~
5,001 to 10,000	50%	79%	66%	52%	83%	69%	60%	42%	45%	51% ~~71%~~	52% ~~72%~~
10,001 to 20,000	50%	80%	67%	52%	84%	69%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
20,000 to 50,000	51%	81%	67%	52%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
50,001 to 100,000	51%	82%	67%	52%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
100,000 to 1,000,000	51%	82%	68%	53%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~
Greater than 1,000,000	51%	82%	68%	53%	85%	70%	61%	43%	45%	51% ~~71%~~	52% ~~72%~~

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

SCHEDULE D-1

KEYSPAN NATURAL GAS SERVICE

PSC No. 12 Gas Rate Schedule

Temporary Additional Benefit for Keyspan SC4A

(High Load Factor) Charges

Average Monthly Consumption	
100 therms or less	0%
101 to 500	9%
501 to 1,000	25%
1,001 to 2,250	38%
2,251 to 5,000	42%
5,001 to 10,000	40%
10,001 to 20,000	39%
20,000 to 50,000	39%
50,001 to 100,000	39%
100,000 to 1,000,000	39%
Greater than 1,000,000	39%

HISTORICAL NOTE

Attachment D-1 amended City Record June 25, 2004 §15, eff. July 25, 2004. [See T66 §5-02 Note 1]

Attachment added City Record Mar. 28, 2003 eff. Apr. 27, 2003

ATTACHMENT E

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT F

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT H

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT I

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT J

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 9, 2001 eff. Feb. 8, 2001. Note Statement of Basis and Purpose: The new rules implement the Energy Cost Savings Program (ECSP) and the Lower Manhattan Energy program (LMEP). They incorporate changes to LMEP and ECSP made by recent amendments to the General City Law and the Administrative Code by Chapter 472 of the Laws of New York, which was signed into law by the Governor on September 20, 2000. These amendments, which set forth how ECSP and LMEP benefits are to be provided in a deregulated market, provide in part that the Commissioner may increase the special rebate percentages (45% for electricity and 35% for natural gas) "at the Commissioner's discretion in order to maintain the special rebate at levels comparable to those historically available under the program, pursuant to rules that

are generally applicable to distinct classes of energy users." These rules do not immediately increase the special rebate. Due to the current volatility in energy markets, it may be appropriate to increase the special rebates for some classes of customers. This issue will be reviewed in the near future.

Rules of the City of New York

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

66 RCNY 5-51

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-51 Authority; Purpose.

(a) These rules are promulgated pursuant to Chapter 4 of the Laws of 1995 of the State of New York, as amended, to effectuate the purposes of the New York City Lower Manhattan Energy Program (the "Program").

(b) The purpose of the Program is to encourage commercial development, through construction, expansion or improvement of commercial space in a defined area of Lower Manhattan, by providing a reduction of certain electricity costs related to the transmission and distribution of electricity for a period of twelve (12) years or, in specified cases involving landmark sites, thirteen (13) years, including reductions in the cost of energy services purchased from the New York City Public Utility Service.

(c) These rules set forth the standards and criteria used to determine eligibility and the available reductions in energy costs, as well as requirements for applications and procedures for review of determinations made in connection with the Program.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (b) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Rules of the City of New York

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

66 RCNY 5-52

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-52 Definitions.

As used in these rules, the following terms shall have the respective meanings set forth below:

Act. "Act" means Article 2-I of the General City Law of the State of New York, as added by Chapter 4 of the Laws of 1995 of the State of New York, as amended by Chapter 154 of the Laws of 1999 and Chapters 103 and 472 of the Laws of 2000.

Applicant. "Applicant" means any person applying individually or jointly as an owner or lessee of a building, or a portion thereof, or an agent of such owner or lessee, for a certificate of eligibility as an eligible redistributor of energy or a qualified eligible redistributor of energy, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the application for a certificate of eligibility and shall include the preapplication and all supporting exhibits submitted and statements made by an applicant to the commissioner for the purpose of determining such applicant's initial eligibility for benefits as an eligible redistributor of energy or as a qualified eligible redistributor of energy under LMEP, and shall include the information required by §5-82 of these rules.

Assessed value. "Assessed value" means the assessed value of the real property and buildings thereon for tax purposes during the tax year in which improvements to such real property and buildings thereon commenced, as

required by and referred to in these rules.

Average monthly load factor. "Average monthly load factor" means, for each electric account, the average monthly load factor for the preceding 12-month period, determined once annually using the most recently available twelve months of load factor data.

Benefit period. "Benefit period" means the number of months a recipient is eligible to receive a special rebate, which period shall not exceed one hundred and forty-four (144) consecutive months, beginning on the effective date of the recipient's certificate of eligibility, unless such building is a landmark site, in which case the benefit period shall not exceed one hundred and fifty-six (156) consecutive months, beginning on the effective date of the recipient's certificate of eligibility.

Building. "Building" means articles, structures, substructures and superstructures erected upon, under, or above real property, or affixed thereto, and fixtures (other than trade fixtures) and other improvements erected or situated thereon.

Building permit. "Building permit" means a permit approving proposed construction work issued by the New York City Department of Buildings, DBS or other agency of the City authorized by law to receive and approve plans for construction work. A building permit shall include a permit to construct a new building, an alteration, foundation, plumbing, sign or equipment work permit and may, at the option of the applicant, include a permit for partial demolition or earthwork.

Certificate of eligibility. "Certificate of eligibility" means the document or documents issued by the commissioner evidencing the eligibility of an applicant to receive a special rebate as an eligible redistributor of energy or a qualified eligible redistributor of energy. The certificate of eligibility shall include such information as is required pursuant to §5-87 of these rules.

Charter. "Charter" means the New York City Charter of New York, as amended.

City. "City" means The City of New York.

Code. "Code" means the Administrative Code of the City of New York, as amended.

Commissioner. "Commissioner" means the Commissioner of DBS or his or her designee or his or her successor in function.

Common areas, systems and facilities. "Common areas, systems and facilities" mean those areas, systems and facilities of a building that are shared by tenants and building owners, including, but not limited to: heating; ventilation and cooling systems; public, light and power; facilities, machinery and support hardware of a building, including, but not limited to, shafts, enclosing walls, corridors and lobbies, and loading docks of a building.

Contiguous square footage. "Contiguous square footage" means gross square footage that is in actual contact or touching along a boundary or at a point, and shall include space on two (2) or more floors that are directly above or below each other.

DBS. "DBS" means the New York City Department of Business Services or its successor in function.

DOF. "DOF" means the New York City Department of Finance or its successor in function.

Directly metered eligible revitalization area energy user. "Directly metered eligible revitalization area energy user" means an eligible revitalization area energy user that is directly metered by a utility.

Effective date. "Effective date" means the effective date of a certificate of eligibility, which date is the first day of

the first billing cycle after a certificate of eligibility is issued.

Eligible building. "Eligible building" means a building or structure that meets the criteria set forth in §25-aa(a) of the Act and §5-61 of these rules.

Eligible charges. "Eligible charges" mean charges for energy services, system benefits charges and competitive transition charges, including service discounts, by a utility determined in accordance with §25-aa(b) of the Act and the applicable provisions of §5-64 of these rules, to which charges the applicable percentages in §5-65 or §5-67 of these rules are applied to determine the amount of a special rebate.

Eligible public utility service charges. "Eligible public utility service charges" mean charges for energy services purchased from NYCPUS, determined in accordance with §25-aa(b) of the Act and the applicable provisions of §5-64 of these rules.

Eligible redistributor of energy. "Eligible redistributor of energy" means a person that meets the criteria set forth in §25-aa(c) of the Act and §5-62 of these rules.

Eligible revitalization area. "Eligible revitalization area" means the area of the City defined in §25-aa(d) of the Act, namely the area of the City in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. Any tax lot which is partly located inside the eligible revitalization area shall be deemed to be entirely located inside such area.

Eligible revitalization area energy user. "Eligible revitalization area energy user" means any person that meets the criteria set forth in §25-aa(e) of the Act and §5-63 of these rules.

Energy services. "Energy services" mean (i) the transportation of electric commodity within the franchised service territory of a utility through such utility's local transmission or distribution assets, (ii) metering of a user's consumption, including meter reading, and (iii) billing services related to the preparation and collection of the user's utility bill. Energy services shall not include the provision of electric commodity, transmission-related functions for which charges are rendered by the New York Independent System Operator, nor shall they include transportation of electric commodity to a utility system.

Energy services bill. "Energy services bill" means a statement of charges for energy services rendered by a utility, NYCPUS, an eligible redistributor of energy or qualified eligible redistributor of energy and shall include a bill for rent or similar charges for the occupancy of premises where such rent or similar charges include the use of energy services.

FERC. "FERC" shall mean the Federal Energy Regulatory Commission.

Floor area. "Floor area" means either the gross area or the rental area of the eligible building. The gross area means all of the area within the exterior walls of the building. The rentable area means the square footage leased to a particular tenant for its exclusive use as reflected in the lease agreement. An applicant may select either of these meanings, but must be consistent in the application of the meaning.

Hospital. "Hospital" means a hospital as defined in §2801 of the Public Health Law of the State of New York.

Hotel. "Hotel" means a building or portion thereof, that is regularly used and kept open as such for the lodging of

guests, including, but not limited to, an apartment hotel, a motel, a boarding house or club or any other facility whose principal use is residential accommodation, whether or not meals are served.

ICIP. "ICIP" means the New York City Industrial and Commercial Incentive Program as set forth in Title 11, Chapter 247, Part 3 of the Code, as amended.

IDA. "IDA" means the New York City Industrial Development Agency established pursuant to §850 of the General Municipal Law of the State of New York, as amended.

Landmark site. "Landmark site" means a building or any part thereof that has been designated as a landmark pursuant to the provisions set forth in Chapter 3 of Title 25 of the code.

LMEP or Program. "LMEP" or "Program" means the New York City Lower Manhattan Energy Program described in the Act and Subchapter A of these rules.

Manufacturing activity. "Manufacturing activity" means an activity involving the assembly of goods to create a different article or the processing, fabrication, or packaging of goods.

Mixed-use property. "Mixed-use property" means mixed-use property as defined in Title 2-E of Article 4 of the Real Property Tax Law of the State of New York.

Monthly load factor. "Monthly load factor" means, for each electric account, the number determined by dividing (a) the account's energy consumption, measured in kilowatt hours, for a monthly billing period, by (b) the peak electric demand, measured in kilowatts, for such monthly billing period multiplied by the number of billing days in the period multiplied by 24 hours.

NYCPUS. "NYCPUS" means the New York City Public Utility Service established by Local Law No. 78 of 1982, codified in Title 22, Chapter 3 of the code.

Person. "Person" means any individual, partnership, association, corporation, limited liability company, estate or trust, and any combination of the foregoing.

Preapplication. "Preapplication" means the initial filing in the process of applying for a certificate of eligibility and shall contain the information required by §5-82(a) of these rules.

Public Service Commission or PSC. "Public Service Commission" or "PSC" means the Public Service Commission of the State of New York, created by and defined in §2 of the Public Service Law of the State of New York.

Qualified eligible redistributor of energy. "Qualified eligible redistributor of energy" shall have the meaning ascribed to such term in §25-aa(m) of the Act.

Real property. "Real property" means land and articles, structures, substructures and superstructures erected upon, under or above the land or affixed thereto and articles of equipment, as described by, and subject to assessment for taxation pursuant to subdivision (a), (b), (f) or (i) of §102(12) of the Real Property Tax Law of the State of New York, but not including any incorporeal right, franchise or special franchise.

Recipient. "Recipient" means an applicant that has satisfied the eligibility criteria of Subchapter B of these rules and has been certified by the commissioner as either an eligible redistributor of energy or a qualified eligible redistributor of energy.

Retail space. "Retail space" means space used by an applicant that: (a) is predominantly engaged in the sale of tangible personal property to any person, for any purpose unrelated to the trade or business of such person; or (b) is

predominantly engaged in selling services to persons for any purpose unrelated to the trade or business of such persons; provided however, where such sale of tangible personal property or services described herein is performed by only one (1) or more operating units, divisions or subdivisions of the applicant, or at only one (1) or more locations, only such operating units, divisions, or subdivisions, or such locations, shall come within the definition contained herein, and provided, further, that retail space shall not include space occupied by bankers, insurance brokers, real estate brokers, stock brokers, doctors, lawyers or accountants.

Service classification. "Service classification" means the classification used by a utility in its rate schedule that sets forth the particular rates charged for energy services that are applicable to particular kinds of customers.

Site visit. "Site visit" means an on-site inspection performed by or at the direction of DBS to determine the use of energy services, size, or occupancy of certain buildings, real property or any portion of such building or real property.

Special rebate. "Special rebate" shall mean the amount of reduction in an energy services bill rendered by a utility or NYCPUS for energy services to an eligible redistributor of energy or a qualified eligible redistributor of energy or directly metered eligible revitalization energy user, or an agent of any of these, and shall be calculated as a percentage of eligible charges in accordance with the provisions of §5-65 or §5-67 of these rules.

Submeter. "Submeter" means a meter that individually and accurately meters an occupant's usage of energy services.

Survey. "Survey" means a study or report based on on-site field inspections, professional surveys by a licensed professional engineer, data collection or meter readings or other actions related to determining the size, use, energy services consumption, or occupancy of certain buildings or real property, or portions thereof.

Systems benefit charge. "Systems benefit charge" means a charge that is regulated by the PSC and that a utility is required to collect from its customers for the purposes of funding public benefit programs.

Targeted eligible building. "Targeted eligible building" means a building or structure which meets the criteria set forth §25-aa(q) of the Act.

UDC. "UDC" means the New York State Urban Development Corporation or any subsidiary or any successor in function thereof created and defined by §6254 of the Unconsolidated Laws of the State of New York.

Utility. "Utility" shall mean any provider of energy services within the eligible revitalization area that is subject both to the jurisdiction and general supervision of the PSC and to a tax imposed pursuant to Chapter 11 of Title 11 of the code.

Utility credit. "Utility credit" means a credit to which a utility is entitled, in accordance with the rules promulgated by DOF, against the tax imposed under Chapter 11 of Title 11 of the code, and equal to the aggregate amount of all special rebates granted by such utility in accordance with the requirements of the Act and these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Average monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Eligible charges amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Eligible charges amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Energy services amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Monthly load factor added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Service classification added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Special rebate amended City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Special rebate amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Rules of the City of New York

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

66 RCNY 5-53

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-53 Law Governing Applications.

Applications pending as of the effective date of these rules and applications filed subsequently shall be governed by these rules. Persons that have been certified as eligible for special rebates under provisions of law in effect before November 1, 2000, are not required to reapply in order to receive benefits under provision of Chapter 472 of the Laws of 2000.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-54

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-54 Rules of Construction.

(a) These rules shall be interpreted and enforced in accordance with the General Construction Law of the State of New York except where the context otherwise requires or a different rule is provided by these rules.

(b) These rules shall be construed consistently with the provisions of the Act, including any amendments thereto.

(c) Provisions of these rules that restate the Act and that do not provide rules or procedures for the exercise of regulatory authority shall not be construed as increasing or diminishing any rights or duties created by the Act, but may be used to assist in the interpretation of the Act.

(d) When the interpretation or application of a provision of these rules in a particular case is uncertain, the description of the purpose and objectives of LMEP set forth in §5-51 of these rules shall be used to assist in the interpretation and application of such provision.

(e) Reference to particular provisions of law in these rules shall be deemed to refer to such provisions, as interpreted by the applicable decisions of Federal and New York State Courts.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-55

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-55 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or recipient's refusal to provide factual information or to cooperate with the commissioner or the staff of DBS in the review of the facts and circumstances upon which a determination of eligibility or of continued eligibility is to be based shall constitute grounds for denial of an applicant's eligibility, or for suspension or revocation of a recipient's certificate of eligibility.

(b) The commissioner may deny an application for a certificate of eligibility or suspend, terminate or revoke a certificate of eligibility issued pursuant to the program whenever:

(1) a recipient fails to comply with the requirements set forth in the Act or these rules; (2) an application, certificate, amendment, supplement or other document submitted by an applicant pursuant to the Act or these rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading;

(3) any real property tax or water or sewer charge due and payable with respect to an eligible building or targeted eligible building shall remain unpaid for at least one (1) year following the date upon which such tax or charge became due and payable, unless within thirty (30) days from the mailing of a notice of termination by DBS satisfactory proof is presented to DBS that any and all delinquent taxes and charges owing with respect to such building as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with

the appropriate City agency; or

(4) any payment in lieu of taxes payable with respect to such buildings shall remain unpaid for at least one (1) year following the date upon which such payment became due and payable, unless within thirty (30) days from the mailing of a notice of termination by DBS satisfactory proof is presented to DBS that any and all delinquent payments in lieu of taxes with respect to such building as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the appropriate City agency.

(d) DBS shall revoke a certificate of eligibility in the event a recipient fails at any time within the first five (5) years of the benefit period to submeter any portion of a building as required by the Act or in accordance with the requirements set forth in paragraph §5-63(d)(1) of these rules. The City may maintain a civil action or proceeding to recover an amount equal to any benefits improperly obtained.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-56

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-56 Actions of Employees.

Employees and agents of the City whose duties require them to take actions in connection with ECSP shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules. However, noncompliance by such employees or agents with the requirements of these rules shall not be deemed to void any obligation of, or to waive any requirement imposed on, an applicant or recipient, or to excuse any noncompliance by an applicant or recipient with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-57

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-57 Separability.

If any provision of these rules or its application shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these rules, but shall be confined in its operation to the provision thereof directly involved.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-58

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§5-58 Effective Date of Rules.

The effective date of these rules shall be November 1, 2000, and they shall apply to persons certified as eligible to receive special rebates under the laws and rules applicable to LMEP prior to such effective date as well as to applicants certified as eligible for such special rebates after such effective date, provided that where bills for sales of energy services are rendered on a monthly billing cycle, the calculation of special rebates shall, for each eligible revitalization area energy user, eligible redistributor of energy or qualified eligible redistributor of energy, be based on the applicable percentages and eligible charges under the provisions of the Act and these rules beginning with the first billing cycle beginning after November 1, 2000, and the calculation of such rebates prior to such time shall be based on the applicable percentages and eligible charges in effect on or before November 1, 2000, and provided, further, that special rebates shall be calculated pursuant to §5-66 or §5-67, if applicable, beginning with the first billing cycle beginning after June 1, 2001, and the calculation of such rebates prior to such time shall be based on the applicable percentages and eligible charges in effect on or before June 1, 2001.

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-61

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-61 Eligible Building.

To qualify as an eligible building, a building shall be located in an eligible revitalization area and:

(a) shall meet the criteria set forth in paragraphs (1), (2), (3) or (4) below:

(1) such building is eligible to obtain benefits under Title 2-D of Article 4 of the Real Property Tax Law, or would be eligible to receive benefits under such title except that such property is exempt from real property taxation and the requirements of paragraph (b) of subdivision seven of section four hundred eighty-nine-dddd of such law have not been satisfied, provided that application for such benefits was made after June 30, 1995, and before July 1, 2005, that construction or renovation of such building or structure was described in such application, that such building or structure has been substantially improved by such construction or renovation, and that the minimum required expenditure as defined in such title has been made within such period of time established by the applicable provisions of Title 2-D of Article 4 of the Real Property Tax Law for the construction of a new building or structure; or

(2) such building is the subject of an IDA inducement resolution adopted by the IDA after June 30, 1995 and before July 1, 2005, to receive financing by IDA, provided that IDA financing has been used in whole or in part to substantially improve the building by construction or renovation, that expenditures made for improvements to the building have been made in excess of twenty percent (20%) of the assessed value of the real property and buildings, and that such expenditures have been made within thirty-six (36) months after the earlier of: (A) the issuance by IDA of

bonds for such financing; or (B) the conveyance of title to such building to IDA; or

(3) such building is owned by the City or UDC, and is subject to a lease that was approved in accordance with the applicable provisions of the Charter or by UDC's board of directors, as the case may be, and such approval was obtained after June 30, 1995, and before July 1, 2005, provided that expenditures have been made for improvements to such real property in excess of twenty percent (20%) of the assessed value of the real property and buildings, and that such expenditures have been made within thirty-six (36) months after the effective date of such lease; or

(4) is eligible to obtain benefits as mixed-use property, or would be eligible to obtain benefits as mixed-use property except that such building is exempt from real property taxation and the requirements of paragraph (b) of subdivision ten of section four hundred eighty-nine-ccccc of the Real Property Tax Law of the State of New York have not been satisfied, provided that application was made after June 30, 1995, and before July 1, 2000, that such building has been substantially improved by such renovation, and that the minimum required expenditure as defined in such title has been made;

(b) such construction or renovation described in subdivision (a) of this section shall occur subsequent to filing for a building permit for such construction or renovation. In the case where a building permit is not required for renovation or construction (e.g., installation of machinery), an application shall be filed prior to beginning any work on the building the expenditures for which are described in subdivision (a) of this section. Such fact must be documented by a written statement by a licensed professional architect or licensed professional engineer sworn to or affirmed under penalties of perjury;

(c) such building or portion thereof shall have provisions to receive electricity either: (i) directly from a utility; or (ii) from NYCPUS; and

(d) such building or portion thereof is metered or submetered in accordance with the provisions set forth in paragraph §5-63(d)(1) of these rules.

HISTORICAL NOTE

Section amended City Record June 25, 2004 §16, eff. July 25, 2004. [See

T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

66 RCNY 5-62

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-62 Eligible Redistributor of Energy.

(a) Only eligible redistributors of energy and qualified eligible redistributors of energy, as described in, and to the extent permitted by, the Act and these rules, are eligible for special rebates under LMEP.

(b) To qualify for benefits as an eligible redistributor of energy, an applicant must own or lease an eligible building, or a portion thereof, and purchase energy services on a metered basis from a utility or NYCPUS, and:

(1)(i) resell or otherwise redistribute such energy services to one or more eligible revitalization area energy users that occupy such eligible building; or

(ii) consume or use such energy services itself and qualify as an eligible revitalization area energy user; and

(2) individually and accurately meter or submeter the energy services it redistributes in accordance with the provisions set forth in paragraph §5-63(d)(1) of these rules.

(c) A person that owns or leases any portion of an eligible building containing mixed-use property shall not be an eligible redistributor of energy unless that portion of such mixed-use property used for commercial purposes is metered by a utility or NYCPUS directly and separately from other portions of such mixed-use property.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-63

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-63 Eligible Revitalization Area Energy Users.

(a) To qualify for benefits as an eligible revitalization area energy user, a person shall: (1) purchase or otherwise receive energy services for its own use either directly from a utility or NYCPUS or from an eligible redistributor of energy or a qualified eligible redistributor of energy;

(2) occupy, operate or manage premises in an eligible building or a targeted eligible building; and

(3) be metered or submetered in accordance with the provisions set forth in subdivision (d) of this §5-63.

(b) A person shall not qualify as an eligible revitalization area energy user if such person engages in any of the following activities or uses in an eligible building or targeted eligible building:

(1) occupying residential space;

(2) engaging primarily in manufacturing activity;

(3) operating a hospital;

(4) operating a hotel; or

(5) occupying retail space.

(c) An eligible redistributor of energy shall be an eligible revitalization area energy user with respect to:

(1) vacant premises within an eligible building which have been constructed or renovated by such eligible redistributor of energy for occupancy by an eligible revitalization area energy user other than such eligible redistributor of energy; and

(2) common areas, systems and facilities to the extent such common areas, systems and facilities are used by eligible revitalization area energy users and such usage is not billed to such users, except that a person shall not be an eligible revitalization area energy user of common areas, systems and facilities located in mixed-use buildings unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(d) A person shall not qualify as an eligible revitalization area energy user if the premises occupied, operated or managed by such person:

(1) exceed the lesser of ten thousand (10,000) contiguous square feet in area or the entire floor of an eligible building or targeted eligible building and are not individually and accurately metered or submetered to determine the occupant's usage of energy services. A person that occupies more than one (1) floor of an eligible building or targeted eligible building or more than ten thousand (10,000) contiguous square feet, is required to have only one (1) meter or submeter for its premises; or

(2) are located in that portion of mixed-use property used for commercial purposes, and such portion is not metered by a utility or NYCPUS directly and separately from other portions of such mixed-use property.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-64

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-64 Eligible Charges and Eligible Public Utility Service Charges.

(a) **Eligible charges.** (1) Eligible charges are charges for energy services purchased from a utility at a rate or rates established pursuant to an order or rule of the PSC or FERC, other than charges for the purchase of the commodity of electricity, and shall include applicable rate reductions for economic development or similar purposes, and all taxes payable thereon and shall exclude charges in accordance with paragraph (2) of this subdivision (a).

(2) Eligible charges shall not include the following charges:

(i) charges for energy services used by persons that are not eligible revitalization area energy users;

(ii) any special charges on bills relating to such energy services, including, but not limited to, collection charges, late payment charges or excess distribution charges, or any additional fee charged by an eligible redistributor of energy for energy services, as authorized by subdivision §5-71(g) of these rules; and

(iii) charges for energy services used for common areas, systems and facilities to the extent such services are excluded pursuant to subparagraph (3)(ii) of this section.

(3)(i) Except as set forth in subparagraph (ii) of this subdivision, eligible charges shall include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraphs

(1), (2) or (3) of subdivision §5-61(a) of these rules to the extent such common areas, systems and facilities are used by eligible revitalization area energy users, except that charges attributable to other users, if minor and incidental, may be included in eligible charges for such common areas, systems and facilities.

(ii) Eligible charges shall not include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraph §5-61(a)(4) of these rules, unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(b) **Eligible public utility service charges.** (1) Eligible public utility service charges are actual charges for energy services provided by a public utility service, including charges for public utility administrative services, and shall include all taxes payable thereon, and shall exclude charges in accordance with paragraph (2) of this subdivision (b).

(2) Eligible public utility service charges shall not include the following charges:

(i) charges for energy services used by persons that are not eligible revitalization area energy users;

(ii) any special charges on such bills relating to energy services, including, but not limited to, collection charges, late payment charges or excess distribution charges, or any additional fee charged by an eligible redistributor of energy or qualified eligible redistributor of energy for energy services, as authorized by subdivision §5-71(g) of these rules; and

(iii) charges for energy services used for common areas, systems and facilities to the extent such energy services are excluded pursuant to paragraph (3)(ii) of this section.

(3)(i) Except as set forth in subparagraph (ii) of this subdivision, eligible public utility charges shall include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraphs (1), (2) or (3) of subdivision §5-61(a) of these rules or a targeted eligible building meeting the criteria set forth in paragraph (1), (2) or (3) of subdivision (q) of §25-aa of the Act to the extent such common areas, systems and facilities are used by eligible revitalization area energy users, except that charges attributable to other users, if minor and incidental, may be included in eligible charges for such common areas, systems and facilities.

(ii) Eligible public utility service charges shall not include charges for energy services used for common areas, systems and facilities of an eligible building meeting the criteria set forth in paragraph §5-61(a)(4) of these rules or a targeted eligible building meeting the criteria set forth in paragraph (4) of subdivision (q) of §25-aa of the Act, unless such common areas, systems and facilities are separate from the common areas, systems and facilities that serve that portion of the mixed-use property used for residential purposes and serve only that portion of such mixed-use property used for commercial purposes.

(c)(1) An eligible redistributor of energy or qualified eligible redistributor of energy has the burden of demonstrating to the commissioner that charges for energy services are eligible charges or eligible public utility service charges. If a determination of such charges cannot be ascertained by the commissioner without a survey or such redistributor is not satisfied with the commissioner's determination of such redistributor's eligible charges or eligible public utility service charges, such redistributor may request that the commissioner cause a survey to be conducted by a licensed professional engineer satisfactory to DBS at such redistributor's expense. Upon completion of the survey, the professional who prepares such survey shall submit the report, together with a certification as to the amount of eligible charges or eligible public utility service charges, to the commissioner for his or her review.

(2) The commissioner, after reviewing all relevant documentation submitted by the applicant, shall, in his or her sole discretion, determine the amount of charges that constitute the eligible redistributor's or qualified eligible redistributor's eligible charges or eligible public utility service charges to which a special rebate may be applied. If such redistributor disagrees with the commissioner's findings, such redistributor may request an opportunity to be heard in

accordance with the procedures set forth in §§5-45, 5-46 and 5-47 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-65

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-65 Special Rebates for Users and Redistributors that Applied for LMEP Benefits After October 31, 2000.

(a) Except as otherwise provided in subdivision (b) of this section, a utility that sells energy services to either an eligible redistributor of energy that applied for LMEP benefits after October 31, 2000, or a directly metered eligible revitalization area energy user that applied for LMEP benefits after October 31, 2000, shall make a special rebate to such redistributor or such user, as the case may be, equal to the following percentages of eligible charges:

Months During Benefit Period Special Rebate for Energy Services

first through ninety-sixth 45%

ninety-seventh through one hundred eighth 36%

one hundred ninth through one hundred twentieth 27%

one hundred twenty-first through one hundred thirty-second 18%

one hundred thirty-third through one hundred forty-fourth 9%

(b) A utility that sells energy services to either an eligible redistributor of energy that applied for LMEP benefits after October 31, 2000 and that owns or leases an eligible building that has been designated as a landmark site before

the issuance of a certificate of eligibility to such redistributor, or to a directly metered eligible revitalization area energy user occupying premises in such building that applied for LMEP benefits after October 31, 2000, shall make a special rebate to such redistributor or such user, as the case may be, equal to the following percentages of eligible charges:

Months During Benefit Period Special Rebate for Energy Services

first through one hundred eighth 45%

one hundred ninth through one hundred twentieth 36%

one hundred twenty-first through one hundred thirty-second 27%

one hundred thirty-third through one hundred forty-fourth 18%

one hundred forty-fifth through one hundred fifty-sixth 9%

(c) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to an eligible redistributor of energy or a directly metered eligible revitalization area energy user that applied for and was certified as such after October 31, 2000, such utility shall make a discount to NYCPUS and NYCPUS shall make a special rebate to such eligible redistributor of energy or such directly metered eligible revitalization area energy user, which discount and special rebate shall be the product of the eligible charges to such eligible redistributor of energy or such directly metered eligible revitalization area energy user and the applicable percentage for a special rebate for energy services in the applicable schedule contained in subdivision (a) or (b) of this section.

HISTORICAL NOTE

Section amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-66

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-66 Special Rebates for Redistributors and Users that Applied for LMEP Benefits Prior to November 1, 2000 and Were Certified Prior to July 1, 2001. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Section added City Record June 18, 2001 eff. July 18, 2001.

Rules of the City of New York

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

66 RCNY 5-67

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER B ELIGIBILITY AND AMOUNT OF THE SPECIAL REBATE

§5-67 Special Rebates for Redistributors and Users that Applied for LMEP Benefits Prior to November 1, 2000.

(a) Paragraph (1) of subdivision (a) of §25-bb of the general city law states that the "that the department of business services of a city having a population of one million or more may increase the percentages set forth in §5-65 of these rules at its discretion in order to maintain the special rebate at levels comparable to those historically provided under the program, pursuant to rules that are generally applicable to distinct classes of energy users." In accordance with this provision, the percentages set forth in this section of the rules shall be applicable to the calculations of special rebates for all eligible redistributors of energy or directly metered eligible revitalization energy users that applied for LMEP benefits prior to November 1, 2000 and for qualified eligible energy redistributors of energy that were certified before November 1, 2000. These percentages shall be in place from the first billing cycle beginning on or after April 30, 2003.

(b) Except as set forth in subdivision (d) of this section, for all billing cycles prior to the ninety-seventh month of each eligible redistributor of energy's or directly metered eligible revitalization energy user's benefit period occurring during the period beginning June 1, 2001, each redistributor or user shall receive rebates on eligible charges as specified in this paragraph; provided that the applicable rebate percentages shall not, for any affected electric account, exceed 100% of the eligible charges charged in any billing cycle.

(1) The rebate percentage to be applied to eligible charges for energy services provided by a utility pursuant to its "PSC No. 9-Electricity Rate Schedule" or "PSC No. 2-Retail Access Rate Schedule" shall equal the percentages

specified in Attachment A of Appendix A of these rules, which shall vary depending on such redistributor's or user's average monthly load factor, applicable service classification and the applicable rate, and whether such redistributor or user receives discounts on service pursuant to a service rider. If, for any affected redistributor or user, eligible charges for energy services were rendered at more than one service classification and/or at more than one rate for a service classification, the rebate percentages specified in Attachment A of Appendix A of these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider applies to such redistributor or user. To the extent that such redistributor or user is served under the utility's "PSC No. 9-Electrical Rate Schedule" its rebate percentages shall be determined as if such redistributor or user was served under the utility's "PSC No. 2-Retail Access Rate Schedule."

(2) The rebate percentage to be applied to eligible public utility service charges for energy services provided by NYCPUS pursuant to its "Service Tariff No. 4 Rate Schedule" shall equal the percentages specified in Attachment B of Appendix A of these rules, which shall vary depending on such redistributor's or user's average monthly load factor, the applicable service classification and the applicable rate, and whether such redistributor or user receives discounts on service pursuant to a service rider or other tariff provisions. If, for any affected redistributor or user, eligible public utility service charges for energy services were rendered at more than one service classification and/or at more than one rate for a service classification or if discounted service was provided to part of the consumption rendered through an account pursuant to a service rider or tariff provision, the rebate percentages specified in Attachment B of Appendix A of these rules shall apply to the extent that each applicable service classification and/or rate and/or service rider or other tariff discount applies to such redistributor or user.

(c) Except as otherwise provided in subdivision (d) of this section, for all billing cycles after the ninety-sixth month of the benefit period and thereafter, the applicable rebate percentages on eligible charges, determined as specified in §5-67(b) or (e) of these rules, shall be multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected eligible redistributor of energy or directly metered eligible revitalization energy user, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period Adjustment Factor

97 through 108 0.8

109 through 120 0.6

121 through 132 0.4

133 through 144 0.2

145 and thereafter 0.0

(d) Where a utility that sells energy services to an eligible redistributor of energy that owns or leases an eligible building that has been designated as a landmark site before the issuance of a certificate of eligibility to such redistributor, or to a directly metered eligible revitalization area energy user occupying premises in such building that applied for LMEP benefits prior to November 1, 2000, all billing cycles in the one hundred and ninth month of each of the above-noted benefit periods and thereafter shall have the applicable rebate percentages on eligible charges, determined as specified in §5-67(b) or (e) of these rules, multiplied by an adjustment factor, depending on the month of the benefit period in which the energy services were rendered; provided that the applicable rebate percentages shall not, for any affected electric account, exceed 100% of the eligible charges charged in any billing cycle. The adjustment factors are as follows:

Month of Benefit Period Adjustment Factor

109 through 120 0.8

121 through 132 0.6

133 through 144 0.4

145 through 156 0.2

157 and thereafter 0.0

(e) Where, pursuant to a written agreement between NYCPUS and the power authority of the state of New York, NYCPUS sells energy services to a qualified eligible redistributors of energy that has been individually approved by such power authority and certified prior to November 1, 2000, or to an eligible redistributor of energy or directly metered eligible revitalization area energy user that applied for benefits prior to November 1, 2000 and was certified as a redistributor or user after October 31, 2000, such utility shall make a discount to NYCPUS and NYCPUS shall make a special rebate to such qualified eligible redistributors or such eligible redistributor or user, which discount and special rebate shall be the product of the eligible public utility service charges to such qualified eligible redistributor of energy or such eligible revitalization area energy user and the applicable percentage for a special rebate for energy services in the applicable schedule contained in Attachment B of Appendix A of these rules.

HISTORICAL NOTE

Section amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Section added City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Rules of the City of New York

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

66 RCNY 5-71

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER C IMPLEMENTATION

§5-71 Implementation by Eligible Redistributor of Energy or Qualified Eligible Redistributor of Energy.

(a) An eligible redistributor of energy or qualified eligible redistributor of energy shall reduce the energy services bills rendered to eligible revitalization area energy users that are not directly metered and that occupy, operate or manage premises in eligible buildings owned or leased by such redistributor by an amount equal, in the aggregate, to one hundred percent (100%) of each special rebate received by such redistributor.

(b) An eligible redistributor of energy or qualified eligible redistributor of energy shall individually and accurately meter or submeter the energy services sold or otherwise redistributed by such redistributor to each such eligible revitalization area energy user or other occupant of eligible buildings so as to enable a determination of each such user's or occupant's usage of energy services, provided such user or occupant occupies, operates or manages premises that equal or exceed the lesser of ten thousand (10,000) contiguous square feet in area or the entire floor of a building.

(c) In order to establish the usage of energy services attributable to the tenants occupying an eligible building, an eligible redistributor of energy or qualified eligible redistributor of energy shall have a load study performed by a licensed professional engineer on all non-eligible users that are not individually metered or submetered. In addition, such redistributor shall have all of the submeters attributable to non-eligible users read by a licensed professional engineer.

(d) If an eligible redistributor of energy or qualified eligible redistributor of energy charges amounts to eligible

revitalization area energy users and other users that vary annually or more frequently with the costs incurred by such redistributor for the operation of common areas, systems and facilities, such redistributor shall reduce such charges by the portion of the special rebates attributable thereto.

(e) An eligible redistributor of energy or qualified eligible redistributor of energy shall allocate the reductions required by subdivision (a) of this §5-71 in direct proportion to each such eligible revitalization area energy user's use of energy services. Such reductions shall be determined as follows:

(1) The total amount of such redistributor's energy services bill shall be divided by the total amount of kilowatt hours used by the eligible building to determine the cost per kilowatt hour charge for the eligible building;

(2) If the premises of such eligible revitalization area energy user or other user are submetered, such reduction shall be established by multiplying: (A) the amount of energy services use determined by such submeter; by (B) the dollar per kilowatt charge determined in (1) above; by (C) the amount of the special rebate set forth in §5-65 or §5-67 of these rules;

(3) If two or more eligible revitalization area energy users or other users share a submeter, the amount of the reduction to be shared by the eligible revitalization area energy users shall be determined in accordance with (2) above. This amount shall then be allocated among such users in direct proportion to the floor area of the premises occupied, operated or managed by each such user;

(4) If the premises of such eligible revitalization area energy user is not required to be submetered by these rules, such discount shall be determined as follows:

(A) Divide the portion of the special rebate received by all submetered eligible revitalization area energy users by their total square footage to determine the special rebate per square footage amount; and

(B) Multiply the special rebate per square footage amount determined in (A) above by the square footage of each non-submetered eligible revitalization area energy user to determine the amount of the special rebate each such non-submetered eligible revitalization area energy user is entitled to;

(5) The special rebate to be applied to common areas, systems and facilities shall be the total rebate received by the eligible building less: (A) the total special rebate received by each submetered eligible revitalization area energy user as determined in (2) above; and (B) the total special rebate received by each submetered eligible revitalization area energy user sharing a submeter as determined in (3) above; and (C) the total special rebate received by all non-submetered eligible revitalization area energy users as determined in (4) above.

(f) If the premises of an eligible revitalization area energy user are directly metered, such discount shall be determined by such meter.

(g) An eligible redistributor of energy or qualified eligible redistributor of energy shall limit charges to those eligible revitalization area energy users that are submetered in accordance with this section to a price for the purchase of energy services that shall be no higher than the price paid by such redistributor, provided that an additional fee, not exceeding twelve percent (12%) of such sales price, may be charged by such redistributor for energy services sold to such eligible revitalization area energy users.

(h) An eligible redistributor of energy or a qualified eligible redistributor of energy shall separately state in all energy bills rendered by such redistributor to an eligible revitalization area energy user for sales of energy services the amount of the reduction in charges for such services representing the share of the special rebate allocated to such user, or that no reduction has been made, and shall state the following: "You may be entitled to share a rebate which your landlord has received for charges for energy services pursuant to the revitalization area energy rebate program. The amount is separately stated and identified in this bill." Any deviation from this language must be approved in advance

by DBS.

(i) An eligible redistributor of energy or qualified eligible redistributor of energy shall keep records verifying compliance with the requirements of LMEP, and allow DBS access to such records.

(j) An eligible redistributor of energy or qualified eligible redistributor of energy shall provide access to eligible buildings or targeted eligible buildings to DBS for the purpose of inspecting meters, submeters and other equipment and verifying the accuracy of any application or supplement thereto filed with DBS and DOF.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (e) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Subd. (e) par (2) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Rules of the City of New York

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

66 RCNY 5-72

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER C IMPLEMENTATION

§5-72 Implementation by a Utility and NYCPUS.

(a) Where a utility or NYCPUS is required to make a special rebate pursuant to §5-65 or §5-67 of these rules, they shall reduce each energy services bill for each eligible redistributor of energy or qualified eligible redistributor of energy or directly metered eligible revitalization area energy user by the full amount of the special rebate that shall have accrued for the period covered by each such energy services bill. A utility or NYCPUS shall cease to make such reductions in such energy services bills upon receipt of notification from DBS that the certification of eligibility has been suspended or terminated, and a utility or NYCPUS shall change the amount of such reduction in accordance with notification from DBS.

(b) A utility shall not be required to make a special rebate to such eligible redistributor of energy or qualified eligible redistributor of energy in excess of the charges for energy services.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subd. (a) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Subd. (a) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Rules of the City of New York

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

66 RCNY 5-73

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER C IMPLEMENTATION

§5-73 Granting of Utility Credit to a Utility.

(a) Where a utility has granted special rebates to recipients in accordance with the provisions set forth in §5-65 or §5-67 of these rules, it shall be entitled to a utility credit equal to the aggregate amount of all such special rebates it has provided to recipients.

(b) Such utility credit may be taken only as provided for in the code, these rules and rules promulgated by the commissioner of DOF, for the purpose of permitting utilities a deduction against certain taxes.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Subd. (a) amended City Record Mar. 28, 2003 eff. Apr. 27, 2003. [See T66 §5-14 Note 1]

Subd. (a) amended City Record June 18, 2001 eff. July 18, 2001. [See T66 §5-14 Note 2]

Rules of the City of New York

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

66 RCNY 5-81

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-81 Forms and Filing of Application and Preapplication.

(a) All preapplication and application forms may be obtained from DBS, 110 William Street, 3rd Floor, New York, New York 10038, and, upon completion, forms shall be submitted to DBS at the above address. Only completed applications shall be considered by DBS in determining the applicant's eligibility, or ineligibility, under the Act and these rules.

(b) An applicant for benefits under LMEP shall file an application after June 30, 1995 and prior to the issuance of the first building permit for the construction or renovation required pursuant to §5-61 of these rules, but not later than June 30, 2005. For the purposes of these rules, the first building permit shall be the building permit which would, in the ordinary course, allow construction to proceed, even though: (i) such permit was granted before submission of completed plans and specifications for the entire building; (ii) such permit, or the application, plans or specifications upon which it was granted, are later amended; (iii) such permit shall have expired by limitation of time or otherwise become invalid; or (iv) another permit is issued for the same project on the basis of the same or similar plans.

(c) In the case where a building permit is not required for renovation or construction, an application must be filed prior to beginning any work on the building the expenditures for which would be the basis for the determination of whether an applicant has reached the eligibility requirements set forth in §5-61 of these rules. All preapplications must be filed not later than June 30, 2005.

(d) An applicant that purchases or leases an eligible building or a targeted eligible building or a portion thereof, the owner or lessor of which building or portion thereof has been receiving LMEP benefits, must file a preapplication to receive benefits within ninety (90) days of taking occupancy or signing a contract of sale or lease for such building, whichever is earlier.

(e) An applicant applying for benefits under §5-65(c) or §5-67(e) of these rules, must receive approval from NYCPUS prior to submitting its preapplication to DBS and provide evidence of such approval as part of such application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Subds. (b), (c) amended City Record June 25, 2004 §17, eff. July 25, 2004.

[See T66 §5-02 Note 1]

Subd. (e) amended City Record June 18, 2001 eff. July 18, 2001.

Rules of the City of New York

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

66 RCNY 5-82

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-82 Contents of Preapplication and Application.

(a) The applicant shall provide DBS with all information required in the preapplication form, including the following: the applicant's name; name and title of a contact person; telephone number; street address of the building site; block and lot number of the building site; Internal Revenue Service tax identification number; if applicable, the ICIP application number for the building site, and such other information as the commissioner deems necessary or useful for a preliminary determination that an applicant may be eligible to participate in LMEP.

(b) The applicant shall provide DBS with all information required in the application form and deemed necessary or useful for the administration of LMEP, including, but not limited to, the following:

(1) assessed value of the real property and building(s) for which the application has been submitted; total square footage of the building floor area; names and addresses of any parent, subsidiaries or affiliated companies; and the name and title of an individual authorized to complete the application on behalf of the applicant;

(2) estimated commencement date and completion date for construction or renovations;

(3) a certified copy of the deed for the eligible building, or portion thereof, and any lease to the applicant as lessee of the building or any portion thereof;

(4) a listing of all electricity account numbers serving the building or any portion thereof, and a copy of one (1) year's energy bills for each account number directly metered by a utility servicing the building or a sworn statement by the applicant if the applicant has not received one (1) year's bill;

(5) building floor plans;

(6) a list of every tenant or other person occupying, operating or managing premises in the building, including both eligible revitalization area energy users and other users, and the following information relating to such person: the business activity engaged in by such person; the square footage of the premises occupied, operated or managed by such person; contact person; telephone number; location in building identified on the building floor plans referred to in paragraph (v) of this subdivision; a list of the meter(s) or submeter(s) utilized by such person including meter identification numbers if submetered by the landlord or an eligible redistributor of energy or qualified eligible redistributor of energy; account number if directly metered by the utility or NYCPUS; a schematic or other description of the linkage between each such person's consumption of electricity or energy services and the appropriate direct utility meter; and number of employees;

(7) an applicant applying under the provisions set forth in subdivisions (a)(2), (3) or (4) of §5-61 of these rules, shall submit evidence that the expenditures required by such provisions have been made within the time period specified therein;

(8) copy of the relevant building permit issued by the Department of Buildings, if applicable;

(9) relevant documents evidencing the authority of the City, the IDA, UDC or other lessor to lease a building or premises to the applicant, including a copy of the inducement resolution issued by IDA to the applicant, the IDA lease or financing agreement, if applicable; and

(10) any other information, documentary or otherwise, including but not limited to, sworn statements and other data, that the commissioner deems relevant to evaluate the applicant's application.

(c) In addition to the requirements of subdivisions (a) and (b) of this §5-82, an applicant that purchases energy services from NYCPUS shall submit as part of its application, a written contract between the applicant and NYCPUS setting forth the agreement by NYCPUS to provide energy services to the applicant, and stating the conditions for the sale of such energy services.

(d) The applicant shall have the affirmative burden of proving its eligibility to the satisfaction of the commissioner as to each and every fact contained in its application.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-83

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-83 Application Filing Fee.

(a) The applicant shall submit to the commissioner with its preapplication a check for a non-refundable application fee in the following amount:

Square Footage of Building Fee

Less than 10,000 square feet $500

10,001 to 25,000 square feet $1,000

25,001 to 50,000 square feet $1,250

50,001 to 100,000 square feet $1,500

100,001 to 250,000 square feet $2,500

Over 250,000 square feet $5,000

(b) In addition to the filing fee, an applicant shall pay the costs of any survey conducted by or at the request of the

commissioner, to develop or verify any factual matters relating to the application.

(c) All fees shall be made payable by check or money order to the "New York City Department of Small Business Services."

HISTORICAL NOTE

Section amended City Record June 25, 2004 §18, eff. July 25, 2004. [See

T66 §5-02 Note 1]

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-84

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-84 Representations and Warranties.

(a) As part of the preapplication, application, periodic reports and other reports required by the Act or these rules, the applicant shall certify and make such representations and warranties as may, from time to time, be necessary or appropriate to ensure compliance with the provisions of all applicable laws and these rules, including, but not limited to, the following:

(1) that all statements made by or on behalf of the applicant in connection with such applications and reports are made by any person authorized by the applicant to make such statements and having actual knowledge or documentary information sufficient to make informed and accurate statements, and that such person believes all such statements to be true;

(2) that the applicant has paid all of the real property taxes or water or sewer charges or payments in lieu of taxes or has paid timely installments of such taxes or payments in lieu of taxes in accordance with an agreement with a city agency with respect to an eligible building or targeted eligible building;

(3) that the applicant represents, acknowledges, covenants and agrees that it bears sole responsibility for paying the full amount of energy services costs to a utility and/or NYCPUS for which it is directly metered until such time as the special rebate (if any) granted to applicant under LMEP is reflected on the applicant's bill;

(4) that the applicant agrees to permit or cause permission to be granted to the City and its agents to inspect its building and real property upon notice during regular business hours; and

(5) any other representations or warranties as may be required in such applications or reports or requested by the commissioner.

(b) In addition to the requirements of subdivision (a) of this §5-84, the applicant shall covenant and agree to repay with interest at the prime rate, as reported in The New York Times (or similar periodical selected by the commissioner) on the effective date of its certificate of eligibility accrued from the date of receipt, the full amount of any benefits which the applicant has received if subsequently it is determined by the commissioner that the applicant was ineligible to receive those benefits for any reason.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-85

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-85 Approval of an Application.

(a) Approval by the commissioner of an application shall be based on a review of the following information:

(1) representations and/or certifications made by the applicant in its application;

(2) a review of the applicant's prior energy bills;

(3) a site visit performed by DBS; and

(4) any other relevant factors relating to use and occupancy which is deemed to be relevant in making such a determination.

(b) The commissioner, after reviewing all relevant information and documentation submitted, shall, in his or her sole discretion, determine what constitutes the applicant's or recipient's eligible charges. If the applicant or recipient disagrees or is unsatisfied with the commissioner's findings, the applicant or recipient may request an opportunity to be heard in accordance with the procedures set forth in Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-86

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-86 Notification to Applicant.

(a) If the commissioner grants an applicant's application for a certificate of eligibility, DBS shall forward a certificate of eligibility executed by the commissioner to the applicant.

(b) If the commissioner denies an applicant's application for a certificate of eligibility, the commissioner shall notify the applicant in writing, of the reason for such denial. The applicant may request an opportunity to be heard in accordance with the provisions set forth in Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

176 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 5-87

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-87 Certificate of Eligibility.

(a) An applicant shall execute the certificate of eligibility and return it to the commissioner within thirty (30) days of the issuance date stated on the certificate of eligibility. Failure of the applicant to comply with this subsection may result in a revocation of the certificate of eligibility.

(b) The certificate of eligibility shall evidence:

(1) the eligibility and qualification of an applicant as an eligible redistributor of energy or a qualified eligible redistributor of energy or as a directly metered eligible revitalization area energy user;

(2) the benefit period the eligible premises or targeted eligible premises is qualified for;

(3) the benefit an eligible redistributor of energy or a qualified eligible redistributor of energy or a directly metered eligible revitalization area energy user is qualified to receive; and

(4) the date of issuance.

(c) DBS shall coordinate with the recipient, a utility and/or NYCPUS and DOF, where applicable, to establish the benefit period of the certificate of eligibility, which shall be within two (2) months of execution by the applicant of the

certificate of eligibility.

(d) Subsequent to establishing the effective date of the certificate of eligibility, DBS shall affix such date to the applicant's certificate of eligibility and forward a copy of the fully completed and executed certificate of eligibility to the applicant and any other necessary party.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-88

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-88 Notification to a Utility and/or NYCPUS.

(a) DBS shall notify a utility and/or NYCPUS whichever is appropriate, in writing, of an applicant's eligibility to receive a special rebate by forwarding to them a certified copy of an applicant's certificate of eligibility executed in accordance with §5-87 of these rules.

(b) DBS shall notify a utility and/or NYCPUS, whichever is appropriate, in writing, of any changes in an applicant's certificate of eligibility as set forth in §5-87 of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-89

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER D APPLICATION, APPROVAL, NOTIFICATION OF ELIGIBILITY AND COMMENCEMENT OF ELIGIBILITY

§5-89 Periodic and Other Reports to DBS.

(a) During the benefit period, a recipient shall promptly notify the commissioner of any material changes which may affect a recipient's eligibility or the amount of the special rebate under LMEP, including but not limited to, changes in:

(1) sources of energy services;

(2) ownership of the eligible building or the targeted eligible building;

(3) establishment of new direct accounts;

(4) landlord's or directly metered tenant's usage of energy services;

(5) the type of metering or method of billing for usage of energy services at the eligible building or targeted eligible building;

(6) a change in the ratio between floor space occupied by eligible revitalization are energy users and that occupied by other occupants; and

(7) the new tenancy of a noneligible revitalization area energy user.

(b) During the benefit period, DBS must be immediately notified of any additional utility accounts acquired or changes in utility account numbers in the eligible building or targeted eligible building.

(c) When it appears that the percentage of non-eligible use in the eligible building or targeted eligible building changes so that the special rebate for the eligible building or targeted eligible building appears to change, a new load study shall be performed in order to ascertain the new special rebate for the eligible building or targeted eligible building.

(d) During the benefit period, a recipient shall submit to the commissioner a reporting form on September 30th, December 31st, March 31st and June 30th of each year, to document the current status of the recipient's continued eligibility under LMEP. Such reporting form shall include, but shall not be limited to, the following information:

(1) the use or type of operations conducted at the eligible building or targeted eligible building;

(2) any changes in the eligible building's breakdown of eligible versus non-eligible uses;

(3) a summary of building metering or submetering and utility accounts;

(4) architectural rendering of building floor plans showing any changes, including changes in floor space, type of common areas, systems and facilities;

(5) tenant list including, but not limited to, the following: square footage; contact person; telephone number; location in building; meter number if submetered by landlord or account number if directly metered by a utility; and number of employees;

(6) change in the size of tenants' premises;

(7) any additions to or changes in the linkage between an eligible revitalization area energy user's metering scheme and the utility's main direct meter; and

(8) such other information as the commissioner may request to determine eligible charges, eligibility and amount of special rebate.

(e) A qualified eligible redistributor of energy shall submit to DBS on an annual basis proof that the heating and cooling systems within the targeted eligible building continue to meet the performance standards specified in §7813.21 of the State conservation code, or if applicable, a municipal code authorized pursuant to such article, or such predecessor section to which such targeted eligible building, when constructed or substantially renovated, was subject.

(f) All such information may be used by the commissioner for the purpose of determining whether the recipient's certificate of eligibility should be suspended until a final determination of eligibility can be made and/or whether it shall be revoked or revised.

(g) Information received by the commissioner pursuant to this section or otherwise may be used by him or her to determine that a recipient does not satisfy the applicable eligibility criteria in the Act or these rules, and the commissioner may, among other things, suspend such recipient's certificate of eligibility until a final determination of eligibility can be made, or revise, terminate or revoke such recipient's certificate of eligibility.

(h) The commissioner shall notify the recipient, a utility and/or NYCPUS in writing of the determination to revise, suspend, terminate or revoke the recipient's certificate of eligibility. A utility and/or NYCPUS must modify its bills to such recipient to reflect the change in benefits which such revision, suspension, termination or revocation to a recipient's certificate of eligibility is intended to effect within thirty (30) days of receipt of written notice from the

commissioner of such action.

(i) A recipient may request an opportunity to be heard in accordance with Subchapter E of these rules.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-91

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-91 Requests for an Opportunity to be Heard.

Within thirty (30) days after the mailing of a written determination by the commissioner or his or her designee pursuant to the Act or these rules, an applicant or recipient that wants to contest such determination may submit documentation supporting its position to the commissioner or his or her designee and may request an opportunity to be heard.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58 of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-92

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-92 Opportunity to be Heard.

If an opportunity to be heard is requested in accordance with §5-91 of these rules, the commissioner or his or her designee shall, within a reasonable period of time, review the application, all supporting documentation relating to the application and the documentation submitted by the applicant or recipient relating to the determination and schedule a date for a meeting with such applicant or recipient. At such meeting the applicant or recipient may present its arguments and discuss its supporting documentation with the commissioner or his or her representative.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

Rules of the City of New York

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

66 RCNY 5-93

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

SUBCHAPTER E OPPORTUNITIES TO BE HEARD

§5-93 Final Determination; Notification.

(a) After review of the documentation and arguments submitted by the applicant or recipient the commissioner or his or her designee shall make a final agency deter- mination.

(b) The commissioner or his or her designee shall notify the applicant or recipient in writing within a reasonable period of time of his or her final determination on the issue or issues presented by such applicant or recipient pursuant to §5-92 of these rules.

(c) The commissioner or his or her designee shall notify the applicant or recipient, the appropriate utility, NYCPUS, the vendor and DOF, whichever is applicable, of a final determination to issue, deny, revise, suspend or revoke a certificate of eligibility.

HISTORICAL NOTE

Section added City Record Jan. 9, 2001 eff. Feb. 8, 2001 and retroactive to Nov. 1, 2000 per §5-58

of this Chapter. [See Chapter 5 footnote]

182 of 182 DOCUMENTS

Rules of the City of New York

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

66 RCNY 5 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 5-A*1 NEW YORK CITY LOWER MANHATTAN ENERGY PROGRAM

APPENDIX A RATE SCHEDULES

APPENDIX A RATE SCHEDULES

ATTACHMENT A

CON EDISON ELECTRIC SERVICE

PSC No. 2 Retail Access Rate Schedule and PSC No. 9

Electric Rate Schedule

	Low Tension Service													
	SC2 and SC2-RA				SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider O)	
	Rate I		Rate II		Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider I Area Devel Rate	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider L Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor														
Less than 20%	60%	63%	72%	76%	60%	88%	66%	66%	57%	75%	81%	53%	66%	66%
20% to 30%	60%	63%	72%	76%	65%	94%	71%	71%	62%	84%	91%	58%	73%	73%
31% to 40%	60%	63%	72%	76%	68%	99%	74%	74%	67%	92%	99%	63%	79%	79%
41% to 50%	60%	63%	72%	76%	71%	100%	77%	77%	71%	99%	100%	68%	85%	85%
51% to 60%	60%	63%	72%	76%	73%	100%	79%	79%	76%	100%	100%	72%	92%	91%
61% to 70%	60%	63%	72%	76%	75%	100%	81%	81%	80%	100%	100%	76%	98%	98%
Greater than 70%	60%	63%	72%	76%	77%	100%	82%	82%	84%	100%	100%	79%	100%	100%

	High Tension Service									
	SC4, SC9, SC4-RA and SC9-RA								Power for Jobs (Rider O)	
	Rate I				Rate II			Rate III	Rate I	Rate II
	Standard Rate	Rider J Business Incentive Rate	Rider I Area Devel Rate	Rider N Empire Zones Rate	Standard Rate	Rider J Business Incentive Rate	Rider S Industrial Employ Growth	Standard Rate		
Average Monthly Load Factor										
Less than 20%	68%	97%	75%	75%	70%	91%	97%	64%	72%	91%
20% to 30%	73%	100%	79%	79%	77%	100%	100%	71%	79%	100%
31% to 40%	76%	100%	82%	82%	83%	100%	100%	77%	86%	100%
41% to 50%	79%	100%	85%	85%	89%	100%	100%	82%	93%	100%
51% to 60%	81%	100%	87%	87%	95%	100%	100%	88%	100%	100%
61% to 70%	83%	100%	88%	88%	99%	100%	100%	92%	100%	100%
Greater than 70%	85%	100%	90%	90%	100%	100%	100%	97%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT B

NEW YORK CITY PUBLIC UTILITY SERVICE

ELECTRIC SERVICE

Service Tariff No. 4

	Low Tension						High Tension					
	Rate I			Rate II			Rate I			Rate II		
	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount	Standard Rate	Option 3 Discount	Option 5 Discount
Average Monthly Load Factor												
Less than 20%	59%	57%	57%	58%	56%	56%	62%	60%	60%	79%	76%	76%
20% to 30%	63%	60%	60%	62%	60%	60%	66%	64%	64%	86%	82%	82%
31% to 40%	67%	64%	64%	66%	63%	63%	70%	67%	67%	92%	88%	88%
41% to 50%	70%	67%	67%	69%	66%	66%	74%	71%	71%	98%	93%	93%
51% to 60%	74%	71%	71%	73%	70%	70%	79%	75%	75%	100%	99%	99%
61% to 70%	78%	74%	74%	76%	73%	73%	83%	79%	79%	100%	100%	100%
Greater than 70%	81%	78%	78%	80%	76%	76%	87%	82%	82%	100%	100%	100%

HISTORICAL NOTE

Attachment repealed and added City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT C

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

Attachment added City Record June 18, 2001 eff. July 18, 2001.

ATTACHMENT D

HISTORICAL NOTE

Attachment repealed City Record Mar. 28, 2003 eff. Apr. 27, 2003.

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1 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-01 Definitions.

Application package. An "Application package" is a completed package of documents containing all of the information required by the Department of Business Services, pursuant to §6-03(a) of the Rules.

Application Review Committee. "Application Review Committee" shall mean the committee at the Department of Business Services which will review and consider each completed application for a grant submitted pursuant to §6-03 of the Rules. The Committee shall be comprised of: the deputy commissioner; the assistant commissioner for industry relations; the general counsel of the Department of Business Services; and the director of the real estate assistance unit of the Department of Business Services .

BEP. The "BEP" is the Business Expansion Program unit of the Department of Business Services.

Commissioner. The "Commissioner" is the Commissioner of the Department of Business Services.

Department. "Department" means the New York City Department of Business Ser- vices.

Eligible expenses. "Eligible expenses" are expenses for which funds awarded under a grant pursuant to IOP may be used, as specified in §6-06(e) of the Rules.

Grant. A "Grant" is the funds awarded to successful Industry Groups pursuant to IOP.

Industry center. An "Industry center" is a building which has been identified by an applicant Industry Group as the potential site for purchase or long-term lease by the Industry Group, and for which the Industry Group is seeking a grant

of funds under the IOP.

Industry group. An "Industry group" is a legal entity which consists of a group of at least five (5) distinctly owned and controlled commercial and for-profit firms, as determined by the criteria outlined in §6-04(c) of the Rules, or of at least three (3) distinctly owned and controlled firms, as determined by the criteria outlined in §6-04(c) of the Rules, which employ sixty per cent (60%), or more, of the New York City work force in the industry of such applicant Industry Group, as defined by the New York State Department of Labor's four-digit SIC code statistics.

Industry Ownership Program, or IOP. An "Industry Ownership Program, or IOP" shall mean the program under which an Industry Group shall receive a grant to pay for Eligible Expenses in acquiring and renovating a building.

Long-term lease. A "Long-term lease" is a lease with a minimum term of seven (7) years.

Qualification rating sheet. The "Qualification rating sheet" is the rating system to be employed by the Application Review Committee to rate Application Packages, as specified in §6-05 of the Rules.

Rules. "Rules" shall mean the Rules Governing the Industry Ownership Program setting forth the requirements for Industry Groups seeking to obtain a grant under the Industry Ownership Program.

SIC. "SIC" shall mean the New York State Department of Labor's four-digit Standard Industry Code.

Study. "Study" shall mean the preliminary architectural and engineering study of a building under consideration for purchase or Long-Term Lease by an Industry Group applicant to determine such building's suitability for occupancy by the Industry Group, to be made pursuant to §6-04(e) of the Rules.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-01.

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-02 Marketing Plan.

The Department shall market the IOP to attract Industry Group applicants for this program. The Department shall market the program by performing activities which shall include, but shall not be limited to, the following:

(a) The Department shall publish and distribute an IOP promotional brochure to trade associations, firms and real estate brokers.

(b) The Department, through its industry relations specialists, shall conduct consultations with individual firms and industry-wide seminars.

(c) The Department shall publicize the IOP through local development and other not-for-profit corporations, the real estate community and the borough presidents' offices.

(d) The Department shall advertise the IOP in the City Record.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-02.

Section in original publication July 1, 1991.

3 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-03 Application Procedure.

(a) To apply for a grant under the IOP, an industry group must complete and submit an application package to the Department, by the close of business on April 28, 1989; provided, however, that the Commissioner may, in his discretion, extend the application deadline or establish a second round application period by publishing notice of such action in The City Record. Such application package shall include:

(1) a completed application form for the industry group applicant;

(2) a completed application form for each individual firm within the industry group applicant;

(3) a management plan for the expenditure of the grant;

(4) a copy of the certificate of incorporation for the industry group, or such other evidence of the industry group's legal status as the commissioner shall request;

(5) a completed project plan, which shall include the following information:

(i) reasonable assumptions about project costs;

(ii) realistic projections about project feasibility;

(iii) a statement of objectives;

(iv) a financial feasibility analysis, including a projection of income and expenses of the project;

(v) a plan of action should any firm drop out;

(vi) an indication that the industry group applicant has provided an equity contribution of at least ten percent (10%) of the total project costs;

(vii) a statement which identifies and profiles the designated leader of the industry group applicant, including a discussion of the prior work done by such leader, and an estimation of the amount of time such leader expects to commit to the project on a monthly basis;

(viii) an architect's or engineer's report, which shall supply, at a minimum, acceptable uses of the site, ranking those uses in order of acceptability from the most acceptable to least acceptable, with recommendations for the "highest and best" use of the site; and

(ix) a statement of the economic contribution of the proposed project on the community; the local industries which are served; and the contribution of the proposed project on the community's and City's economy to the extent the effect on the industry is positive for other local industries.

(6) such other information as the Department shall request.

(b) Upon receipt of the application package, a BEP project manager shall review the material for completeness. Such project manager shall return incomplete application packages to the industry group applicant.

(c) If an application package is accepted as complete, BEP shall send an acknowledgment letter to the industry group.

(d) Should the project manager determine that an industry group is ineligible for a grant, a rejection letter, stating the reasons for rejection, shall be sent to the industry group.

(e) At such date as the commissioner shall specify, the application review committee shall convene to review all of the application packages received.

(f) In reviewing the application packages, the application review committee shall use the evaluation criteria stated in §6-05.

(g) The application review committee shall determine which industry group applicants are best qualified to receive an IOP grant. The application review committee's determination shall be final.

(h) After the Application Review Committee has approved the grants, approval letters, explaining the requirements for IOP disbursements, shall be sent to the successful Industry Group(s).

(i) If, after the Application Review Committee has reviewed all of the Application Packages, and has approved or denied the grants, there still remains grant money, the Commissioner may specify a second date by which Application Packages may be submitted to the Department and will be considered by the Application Review Committee.

(j) Each Industry Group applicant awarded a grant, and each of the firms which comprise such Industry Group, will be required to comply with all applicable the Department contracting procedures, including, but not limited to, the submission of information necessary for the performance of background investigations.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-04 Qualifications for Eligibility.

(a) Eligibility shall be limited to established Industry Groups.

(b) An Industry Group must be comprised of either:

(1) at least five (5) distinctly owned and controlled commercial, for-profit firms; or

(2) at least three (3) distinctly owned and controlled firms employing sixty per cent (60%), or more, of the New York City work force in the industry of such applicant Industry Group, as defined by the New York State Department of Labor four-digit SIC code statistics.

(c) A distinctly owned and controlled firm is one which meets the following criteria:

(1) a firm will not be considered a distinctly owned and/or controlled firm, if it is owned or controlled by a person or firm in the same or similar line of work, and such other person or firm is a part of the industry group applicant;

(2) a firm will not be considered a distinctly owned or controlled firm if the firm's officers, directors, or employees shall serve in like capacities with another firm in the same or similar line of work, and such other firm is a part of the industry group applicant;

(3) a firm will not be considered a distinctly owned or controlled firm if its shareholders own a controlling interest in another firm in the same or similar line of work, and such other firm is a part of the Industry Group applicant; and

(4) two or more firms owned and/or controlled by the same individual or firm shall be considered as one firm for the purpose of meeting the criteria of this section.

(d) An industry group must have identified a building which shall be considered as a potential site for an industry center. The industry group shall have, at the minimum, entered into a letter of intent to lease or purchase the building, and shall supply the Department with a copy of such letter.

(e) An industry group must have conducted the study of the building to determine its suitability for occupancy by the industry group. The study shall, at the least, include a description of the following:

(1) the existing conditions of the building;

(2) a building code analysis;

(3) a zoning resolution analysis; and

(4) the present floor plans.

(f) An industry group must agree to enter a contract with the Department on terms specified by the Department.

(g) In a joint ownership situation, an executed contract of sale which evidences a commitment by the industry group applicant to purchase the building.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 64, §3-04.

Section in original publication July 1, 1991.

5 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-05 Evaluation Criteria.

The application review committee shall consider whether the industry group is eligible for an IOP grant, pursuant to the criteria outlined in §6-04 above, and whether the industry group is best qualified to receive an IOP grant, based on the eligibility determinations, to be made on the basis of a review of the application packages, using a qualification rating sheet, as outlined below.

The application review committee shall use a qualification rating sheet, which shall rate seven (7) standards on a scale of zero (0) (lowest value) to ten (10) (highest value), using the criteria specified below, in order to rank industry group applicants. These standards and criteria shall include:

(a) **Job retention and creation.** The number of jobs that shall be created and/or retained. Preference shall generally be given to a project which anticipates a net gain in jobs. The industry group's score shall be based on the percentage net gain in jobs. Manufacturing jobs shall be given a preference over commercial jobs.

(b) **Local economic impact.** The application review committee shall consider the positive economic contribution of the proposed project on the community; the extent that local industries are served by the industry group; and the contribution of the industry group on the community's and city's economy.

If the industry group demonstrates a positive economic contribution, it shall receive five (5) points. The greater the economic contribution provided, the higher the score the industry group shall receive.

(c) **Financial feasibility.** An industry group which demonstrates the financial capability of carrying out the project

shall earn a minimum score of five (5) points.

An industry group showing a greater need for the grant shall receive a higher score, while an industry group showing a lesser need shall receive a lower score.

(d) **Equity contribution.** The industry group must contribute equity of at least ten percent (10%) of the total project costs. An industry group which contributes the minimum ten percent (10%) equity shall receive five (5) points; the industry group shall receive one (1) point for each additional two percent (2%) equity it contributes, up to ten (10) points for twenty percent (20%) equity contributed by the applicant.

(e) **Length of lease or joint ownership.** In a lease situation, a seven (7) year lease shall earn a score of five (5) points. Each additional five (5) years of lease term shall earn one (1) additional point, up to a maximum of eight (8) points. In addition, if the proposed lease arrangement includes an option to purchase the premises, the industry group score shall be increased by one (1) point. Industry groups which propose to purchase their premises shall earn a score of ten (10) points.

(f) **Leadership.** The leader of the industry group should, at a minimum, demonstrate that s/he is willing to make the necessary time commitment to make the project work. A minimum score of five (5) points shall be awarded if the industry group has a designated leader who shall provide the necessary time commitment to make the project work. The more time the designated leader plans to spend, the more points the application receives. The more experience the designated leader has with similar projects, the more points the application receives.

(g) **Highest and best use.** The industry group, in its architect's or engineer's report, must evaluate the development potential of a site and identify the "highest and best use" development objective for a building.

An industry group shall receive a score of ten (10) points if the project use is listed as the only acceptable use in the architect's or engineer's report. If such report describes two (2), or more, uses, the industry group shall receive ten (10) points for a project described as the "highest" use of the site, and shall receive a lower score for a project described as a "lower" use; provided, however, that an industry group shall not receive fewer than five (5) points for a project listed in the architect's or engineer's report as an acceptable use.

Each member of the application review committee shall rate each standard. The scores of the members on each standard shall be averaged. The minimum acceptable average score for each standard shall be a five (5). The average scores of all the standards shall be totaled. A minimum acceptable total score for all seven standards shall be thirty-five (35). The qualifying industry groups with the highest scores shall be awarded an IOP grant to the extent funds are available.

HISTORICAL NOTE

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6 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 6 INDUSTRY OWNERSHIP PROGRAM

§6-06 Disbursements and Eligible Expenses.

(a) A qualified industry group shall be eligible to obtain a grant for eligible expenses, as defined in §6-06(e) below, with a grant to a selected industry group limited to a total of $30,000.

(b) All disbursements shall be made pursuant to a grant agreement executed between the Department and the selected industry group applicant(s).

(c) All disbursements shall be used solely for eligible expenses, as specified in §6-06(e) below.

(d) Disbursements shall be made to an industry group on a reimbursement basis. The industry group shall submit to the Department a request for payment, along with paid invoice(s) from each contractor who performed work for which the industry group is seeking reimbursement.

(e) Eligible expenses shall include services directly relating to the necessary technical work to prepare development or financing plans for establishing an industry center, including, but not limited to:

(1) in-depth architectural and/or engineering studies actually and directly related to the development of an individual site, such as floor plans and wiring;

(2) legal assistance associated with establishing or negotiating terms of purchase or long-term lease;

(3) environmental impact studies or other work necessary to comply with regulatory procedures; and

(4) such other costs as approved by the Department and UDC.

(f) Funds must be spent within six (6) months of the award; however, the Department may extend this time limit if, for good cause shown, the funds have not been spent within such six (6) month period.

(g) The selection of each and every contractor identified by an industry group to perform work for the industry group under a grant agreement between the industry group and the Department shall be subject to the approval of the Department.

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Rules of the City of New York

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

66 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-01 Definitions.

Applicant. "Applicant" means any individual, corporation, partnership, sole proprietor, association, agent, trust or estate, applying individually or jointly for benefits under the program, or a holding company, parent corporation, or subsidiary or affiliated corporation so applying on behalf of any of the foregoing.

Application. "Application" means the written document and all supporting documentation submitted by an applicant to the Department for the purpose of determining such applicant's eligibility for an industrial security grant.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the commissioner of the New York City Department of Business Services or his or her designee.

Department. "Department" shall mean the Department of Business Services.

Grant Commitment Contract. "Grant commitment contract" shall have the meaning ascribed thereto in §7-06 hereof.

Industrial Security Grant or Grant. "Industrial Security Grant" or "Grant" means a grant from the program for the costs of purchasing and/or installing approved security-related equipment and/or improvements.

Industrial Security Grant Program or Program. "Industrial Security Grant Program" or "Program" means the program of the Department for the purpose of supplying grants to eligible industrial businesses for security equipment.

NYPD. "NYPD" means the New York City Police Department.

Premises. "Premises" mean the property of a business upon which the security equipment is to be installed.

Program Director. "Program Director" means the director of the program, as so designated by the commissioner of the Department.

Purchase. "Purchase" means a purchase or a lease with a term of 3 or more years.

Rules. "Rules" means the rules governing the operation of the industrial security grant program.

Security Equipment. "Security Equipment" means the security related equipment, improvements and/or construction recommended by the security survey report.

Security Survey. "Security Survey" shall have the meaning ascribed thereto in §7-05 of the rules.

Security Survey Report. "Security Survey Report" shall have the meaning ascribed thereto in §7-05 hereof.

HISTORICAL NOTE

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8 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-02 Eligibility for Industrial Security Grants.

(a) Any applicant which:

(1) employs 10 or more full-time employees or an equivalent number of part-time employees; and

(2) meets the criteria outlined in these rules may be eligible to receive an industrial security grant, which funds shall partially reimburse the applicant for the costs of purchase and/or installation of security equipment, provided, however, that the applicant's eligibility to receive such an industrial security grant shall be subject to the availability of funds for this program.

(b) A business may be eligible for a grant under the program if the commissioner determines that it meets the following criteria:

(1) the premises are located in New York City; and

(2) it employs a minimum of 10 full time employees or an equivalent number of part-time employees; and

(3) with respect to property that is owned by the applicant upon which security equipment is to be installed, it has paid all real estate taxes due, or if in arrears in its payment, has executed a binding repayment agreement with the city; and

(4) it has submitted sufficient proof of its interest in the premises including, but not limited to, evidence of ownership of property or a copy of the lease; and

(5) it operates a business which is classified by standard industrial codes 20 through 39; or

(6) it is an industrial/manufacturing firm, as determined by the Department, located in a Manufacturing ("M") or Commercial 8 ("C8") zone.

(c) The following criteria shall be used by the Department to calculate the number of employees of an applicant for the purposes of determining the eligibility of the applicant and the amount of the grant:

(1) 2 part-time employees are equivalent to 1 full-time employee;

(2) a part-time employee is one who works less than 30 hours per week;

(3) the average number of employees of the applicant over the quarter annual period prior to the application shall be used by the Department to determine the number of employees; and

(4) in the event that an applicant is relocating its business, then the number of employees of the applicant shall be determined after the relocation and at the time the Department conducts its compliance inspection to ensure that the security equipment and installation complies with the Security Survey Report.

(d) An applicant which is determined by the Commissioner to be a retail, commercial or professional service firm, is not eligible to participate in this program.

HISTORICAL NOTE

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9 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-03 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's refusal to provide factual information or to cooperate in the review of the facts and circumstances upon which a determination of the applicant's eligibility or continued eligibility to participate in the program is based shall constitute grounds for a denial of a grant.

(b) The program director may deny a grant if an application is found to contain material misrepresentations, misstatements or omissions.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-04 Application Process.

An applicant must complete an application for an industrial security grant and forward the completed application to the Department. Application forms may be obtained at the Department, Security Service Unit: 17 John Street, 14th floor, New York, New York 10038.

The application shall be reviewed and all information verified by the Department. After such verification, if all program criteria are met, the applicant shall receive a security survey and may be determined to be eligible to receive a grant reimbursing it for security equipment purchased in accordance with the procedures outlined in these rules.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-05 Security Survey.

The eligible applicant shall be scheduled by the Department for a security survey of its premises, which shall be performed by either NYPD or by the Department's Security Office, at the option of the Department. Thereafter, the security survey report shall be issued outlining security needs and recommending appropriate security equipment for premises of the applicant. All security survey reports are held confidential by the Department to the extent permitted by law.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-06 Work Procurement Process and the Grant Commitment Contract.

In order to obtain reimbursement for security equipment, upon receipt of the security survey report, the applicant shall obtain a minimum of 3 estimates from 3 contractors for the purchase and installation of security equipment, and shall forward them to the Department. Provided that, with the Department's approval, the applicant may obtain only 1 estimate for the purchase and installation of security equipment under the following circumstances:the applicant intends to upgrade its existing security systems and intends to purchase the security equipment from the original supplier and such equipment and/or improvements are integrated into the existing security system. Thereafter, in order to obtain reimbursement for security equipment installed, such estimate shall be forwarded to the Department.

The Department shall review the estimate or estimates and if the Department determines that an applicant is eligible for the grant, the Department may approve payment in an amount not to exceed the lowest responsive estimate and may approve the specifications and bid proposal for the purchase and installation of the security equipment. The applicant may use any of the contractors which provided estimates submitted to the Department to perform the work, but the security equipment to be installed must conform with the specifications as approved by the Department and the amount of the grant shall also be based upon the price approved by the Department, subject to modification with the approval of the commissioner. If the Department determines that none of the estimates it receives is responsive, the Department shall request that the applicant obtain and submit additional estimates.

The Department shall determine if a contractor or applicant appears on the city "Vendex" consolidated caution list, which list identifies organizations with which the City either cannot do business or which have had substantial problems with one or more City agencies. If a contractor or an applicant appears on such list, the Department reserves the right not to make a grant to an applicant. The Department shall prepare a grant commitment contract to be executed by the

eligible applicant and the Department, which shall provide that the applicant may be reimbursed for security equipment installed upon the applicant's premises, in accordance with the terms noticed in the grant commitment contract, provided that the applicant has complied with the terms and conditions of these rules, the grant commitment contract and any amendment thereof. The commissioner shall have the right to refuse, in his or her sole discretion, to make a grant to an applicant.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 7 INDUSTRIAL SECURITY GRANT PROGRAM

§7-07 Reimbursements.

Upon receipt of all documents required by the Department, the Department may issue a grant to the applicant subject to verification by the Department that applicant is in compliance with these rules. The amount of the grant shall be the lesser of:

(a) $187.50 per each of the applicant's full-time employees (or equivalent of part-time employees), up to a maximum of 40 employees; or

(b) 50% of the cost approved by the Department of the security equipment, provided that the maximum amount to be paid under (a) or (b) shall not exceed $7,500 per applicant.

Such reimbursement shall not include reimbursement for sales tax.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-01 Purpose.

The commercial security program is part of New York City's commercial business retention effort. The program is designed to enable groups of commercial businesses in selected low and moderate income neighborhoods located in designated areas to obtain technical assistance provided by the Department and NYPD for proven, cost effective crime prevention techniques to reduce burglary, robbery, pilferage, and other threats to property and personal safety within the premises of participating merchants and in areas where participating merchants and other commercial businesses are located. Grants may be awarded to eligible participating merchants to partially offset the cost of purchasing and installing security equipment. Grant monies may be applied solely for those security improvements that are specifically recommended by NYPD or the Department.

HISTORICAL NOTE

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15 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-02 Definitions.

Applicant. "Applicant" means any individual, corporation, partnership, sole proprietor, association, agent, trust or estate, which is located in New York City and which is applying individually or jointly for grants on behalf of participating merchants that are located in a designated area.

Application. "Application" means a written request in a form satisfactory to the Department, with any supporting documents, made by an applicant to the Department for the purpose of determining the eligibility of participating merchants for commercial security grants.

Application review committee. "Application review committee" means a committee comprised of three persons selected by the Commissioner.

Business improvement district or BID. "Business improvement district" or "BID" means an area of the city which has been established and operated pursuant to §25-401 et seq. of the New York City Administrative Code and is administered by a district management association in accordance with the requirements of law.

City. "City" means the City of New York.

Commercial business. "Commercial business" means a storefront business predominantly involved in the sale of goods and/or services directly to the public.

Commercial revitalization area(s) or CR area(s). "Commercial revitalization area(s)" or "CR area(s)", mean(s) the

designated streets of the City described as the target area(s) in any CR contract(s) and amendment(s) thereto, including CR contract(s) no longer in effect.

Commercial revitalization contract(s) or CR contract(s). "Commercial revitalization contract(s)" or "CR contract(s)" mean(s) any contract(s) for services under the CR program.

Commercial revitalization program or CR program. "Commercial revitalization program" or "CR program" means a program of the City administered by the Department in which not-for-profit corporations contract with the Department for funds to provide services and assistance to targeted commercial areas including, but not limited to, capital assistance, merchant liaison services and employment services, and, for the purpose of these rules only, shall not include contracts solely for research studies.

Commercial security grant or grant. "Commercial security grant" or "grant" means a grant from the program to be used to reimburse the participating merchants for the costs of purchasing and/or installing security equipment.

Commercial security program or program. "Commercial security program" or "program" means the program of the Department for the purpose of supplying grants to eligible commercial businesses.

Commissioner. "Commissioner" means the commissioner of the New York City Office of Business Services or his or her designee or successor in function.

Community development block grant. "Community development block grant" means funds provided by the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301, et seq.), as amended.

Department. "Department" means the New York City Department of Business Services.

Designated area or area. "Designated area" or "area" means an area of the City which is eligible to receive community development block grant funds and is located in either: (1) a BID or SAD; or, (2) a commercial revitalization area.

District management association. "District management association" means an association established pursuant to §25-413 of the New York City Administrative Code.

Fiscal year. "Fiscal year" means the time period commencing on July 1st of one year and ending on June 30th of the next successive year.

Grant commitment agreement. "Grant commitment agreement" shall have the meaning ascribed thereto in §8-08 hereof.

Industrial/manufacturing firm. "Industrial/manufacturing firm" means a predominantly industrial business which is classified by standard industrial codes 20 through 39, or a predominantly industrial business which is located in a manufacturing (M) or commercial 8 ("C8") zone.

NYPD. "NYPD" means the New York City Police Department.

Participating merchant or merchant. "Participating merchant" or "merchant" means a commercial business on whose behalf an applicant has sought benefits under the program.

Premises. "Premises" means the property of a participating merchant upon which the security equipment is to be installed.

Program director. "Program director" means the director of the program, as designated by the Commissioner of the

Department.

Purchase. "Purchase" means a purchase or a lease with a term of three or more years.

Rules. "Rules" means the rules covering the operation of the commercial security grant program.

Security equipment or equipment. "Security equipment" or "equipment" means the security-related equipment, improvements and/or construction recommended by the security survey report.

Security survey. "Security survey" shall have the meaning ascribed thereto in §8-07 of the regulations.

Security survey report. "Security survey report" shall have the meaning ascribed thereto in §8-07 hereof.

Special assessment district or SAD. "Special assessment district" or "SAD" means the Jamaica Center Mall special assessment district in the borough of Queens established pursuant to Chapter 665 of the Laws of New York of 1978, as amended by Chapter 466 of the Laws of New York of 1984; or the Fulton Mall special assessment district in the borough of Brooklyn established pursuant to Chapter 911 of the Laws of New York of 1976, as amended by Chapter 17 of the Laws of New York of 1981; or the Nassau Street Mall special assessment district in the borough of Manhattan established pursuant to Chapter 806 of the Laws of New York of 1977, as amended by Chapter 828 of the Laws of New York of 1980 and Chapter 636 of the Laws of New York of 1986; or the 165th Street Mall special assessment district in the borough of Queens established pursuant to Chapter 910 of the Laws of New York of 1976.

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16 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-03 Security Education.

All commercial businesses and merchants, whether or not such merchants are eligible for other benefits under these rules, are eligible to receive special security training for their employees, provided they are located in a designated area. Instruction is provided by the Department and NYPD. Lectures, seminars, and an instructional training program on specialized topics include, but are not limited to, security systems design and general assets protection.

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Rules of the City of New York

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

66 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-04 Eligibility for Commercial Security Grants.

(a) A participating merchant may be eligible to receive a grant if it is located in a designated area. A participating merchant which is eligible for a grant must meet the other requirements set forth in these rules in order to receive reimbursement for the expenses of purchasing and installing security equipment, provided that, each participating merchant's eligibility to receive a grant shall be subject to the availability of funds.

(b) Industrial/merchant firms are not eligible to participate in this program.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-05 Material Misrepresentations, Misstatements and Omissions.

(a) An applicant's or participating merchant's refusal to provide factual information or to cooperate in the review of the facts and circumstances upon which a determination of the applicant's or participating merchant's eligibility or continued eligibility to participate in the program is based shall constitute grounds for a denial of a grant or return of a grant which has been disbursed by the Department.

(b) The application review committee may deny a grant or obtain the return of a grant if an application or any documents in support of a request for a grant are found to contain material misrepresentations, misstatements or omissions.

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Rules of the City of New York

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

66 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-06 Application Process.

(a) An applicant must take an application for a commercial security grant on behalf of at least 6, but not more than 20 participating merchants, all of which must be located in the same designated area, except that, with the approval of the Commissioner, the number of participating merchants may be increased. An applicant must submit letters of intent from the participating merchants, in a form satisfactory to the application review committee, that indicate their desire to participate in the program. The participating merchants must promptly forward any required documentation to the Department. Information, application forms, and sample letters of intent may be obtained at the Department, Security Service Unit, 17 John Street, 14th floor, New York, New York 10038.

(b) The application review committee shall review all information and may verify the information provided. After such review or verification, if all program criteria are met, each participating merchant shall receive a security survey and may be determined by the application review committee to be eligible to receive a grant in accordance with the procedures outlined in these rules.

HISTORICAL NOTE

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20 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-07 Security Survey.

Each participating merchant may be scheduled by the program director for a security survey of its premises, which shall be performed by either the NYPD or by the Department's security services office, at the option of the Department. Thereafter, the security survey report shall be issued outlining security needs and recommending appropriate security equipment for the premises. All security survey reports are held confidential by the Department to the extent permitted by law.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 8-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-08 Work Procurement Process and the Grant Commitment Agreement.

(a) In order to obtain a reimbursement for security equipment, after the participation merchant receives a copy of the security survey report, the participating merchant shall obtain a minimum of three estimates for each of the items of security equipment from three contractors for the purchase and installation of the security equipment, unless the applicant agrees to coordinate the purchase and installation of the security equipment on behalf of the merchants as described in subdivision (b) below. The participating merchant may select any of the contractors which provided estimates submitted to the Department to perform the work. With the program director's approval, the participating merchant or the applicant may obtain only one estimate for the purchase and installation of the security equipment under the following circumstances:

(1) the participating merchant intends to upgrade the existing security equipment and wants to purchase the security equipment from the original supplier and such equipment is integrated into the existing security system; or

(2) when the cost for the purchase and installation of the security equipment does not exceed $500. If the participating merchant obtains only one estimate, then the participating merchant or the applicant shall forward the estimate to the Department subject to the program director's approval of the reasonableness of the expense.

(b) In the event that the participating merchants on whose behalf the applicant has applied have each received security survey reports that indicate the need for the same or similar kinds of security equipment and if such participating merchants have agreed, then the applicant may coordinate the purchase and installation of the security equipment for such merchants. The application shall obtain a minimum of three estimates for each of the items of security equipment from three contractors for the purchase and installation of the security equipment for each

participating merchant included in the same application and the applicant shall forward the estimates to the Department. With the program director's approval, the applicant may obtain only one estimate for the purchase and installation of the security equipment pursuant to the circumstances indicated in subdivision (a) above. The applicant for the participating merchants may select any of the contractors which provided estimates which were submitted to the Department to perform the work.

(c) The estimate or estimates, specifications and bid proposals for purchase and installation of security equipment shall be subject to the approval of the Department. The security equipment must conform with the specifications approved by the Department and the amount of the grant shall be based upon the lowest responsive estimate as approved by the Department, subject to modification with approval of the program director.

(d) If the Department determines that less than the required number of estimates it has received from the participating merchant or applicant is responsive, the program director shall request that the applicant or participating merchant obtain and submit to the Department additional estimates, which shall be subject to the Department's approval.

(e) The participating merchant is responsible to take all steps necessary to ensure prompt completion of the application and to obtain an estimate or estimates or cause an estimate or estimates for the security equipment to be obtained by the applicant within a reasonable time after the completion of the security survey reports. If the Department determines that the applicant and/or any of the participating merchants have failed to timely take all necessary action required to purchase and install the security equipment in accordance with these rules and the grant commitment agreement, then the Department may deem the merchants included in such application ineligible for the grants.

(f) The program director shall determine if an applicant, contractor or participating merchant appears on the city "Vendex" consolidated caution list, which list identifies organizations with which the city either cannot do business or which have had substantial problems with one or more city agencies. If a contractor, participating merchant, or an applicant appear on such list, the Department reserves the right not to make a grant.

(g) The Department shall prepare a grant commitment agreement to be executed by the eligible participating merchant and the Department, which shall provide that the eligible participating merchant may be reimbursed for security equipment installed upon the eligible participating merchant's premises in accordance with the terms noticed in the grant commitment agreement, so long as the eligible participating merchant has complied with the terms and conditions of these rules, the grant commitment agreement and any amendment thereof. The application review committee shall have the right to refuse, in its sole discretion, to make a grant to an eligible participating merchant.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 8-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-09 Reimbursements.

Upon the installation and purchase of the Security Equipment and upon receipt of all documents required by the Department, the Department may issue, subject to verification by the Department that the eligible participating merchant is in compliance with these rules and the grant commitment agreement, a grant payment to the participating merchant which shall be up to a maximum of 50% of the approved estimate of the cost of the security equipment, up to a maximum of $1,000 per participating merchant. The matching funds for the remaining 50% or more of the cost of the security equipment must be provided by the participating merchant and shall not be derived from capital assistant funds under the CR program or any other public funds. In order to increase the number of designated areas in the City that may benefit from grants under the program, the maximum total amount of grant benefitting participating merchants on whose behalf an application has been made, which are located in the same designated area, shall be $15,000 within a fiscal year, except with the approval of the Commissioner.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 8-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 8 COMMERCIAL SECURITY GRANT PROGRAM

§8-10 Appeals.

A participating merchant that is denied a grant shall be given written notice of such denial and an opportunity to appeal such denial in writing to the Commissioner. Such appeal must be received by the Commissioner not more than ten business days after receipt by such merchant of the notice denying it a grant. Such appeal shall include, at a minimum, a description of the reason(s) why the merchant believes the denial of a grant was in error and any evidence in support of its appeal that the participating merchant wishes the Commission to consider. Such participating merchant shall provide the Commissioner with any documents or other information requested by the Commissioner. The decision of the Commissioner granting or denying such appeal shall constitute the final agency determination.

HISTORICAL NOTE

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24 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-01 Purpose.

Nothing contained herein shall supersede or modify any rules or regulations, interpretive rulings, advisory opinions or directives of the Department of Finance of the City of New York.

HISTORICAL NOTE

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25 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-02 Definitions.

As used in these rules and regulations the following terms shall have the following meanings:

Benefit. "Benefit" means any cost savings achieved by an electricity redistributor, in connection with the sale or resale and/or redistribution of electricity to a non-residential energy user, as are provided pursuant to Chapter 331 of the 1987 Laws of the State of New York and Local Law No. 49 of the 1987 Laws of the City of New York, including, without limitation, any rebates or discounts received by such electricity redistributor thereunder.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services or his or her successor or designee.

Department. "Department" means the New York City Department of Business Ser- vices.

Electricity redistributor. "Electricity redistributor" means any landlord, tenant or agent thereof, who purchases electricity from a utility or any other person, corporation or other entity and on a metered or unmetered basis, resells or otherwise redistributes for any consideration such electricity to a non-residential energy user.

Non-residential energy user. "Non-residential energy user" means any non-residential user of electricity, except a

government agency or instrumentality thereof, public benefit corporation, or any entity that is exempt from the sales tax imposed pursuant to section eleven hundred seven of the tax law, provided that the term "non-residential energy user" shall not include an owner or operator of residential income producing property, except a hotel.

Utility. "Utility" means any electric corporation, gas corporation or steam corporation subject to the jurisdiction and general supervision of the Public Service Commission of the State of New York.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-03 Certification Requirements.

(a) **General requirements.** A certification of eligibility shall be granted to an electricity redistributor, and remain in effect, only if:

(1) the electricity redistributor does not charge any non-residential energy user in the building for which the certification is granted, for electricity furnished to such energy user's premises, on a metered or unmetered basis, more than one hundred twelve percent (112%) of the rate for electricity resold or redistributed, that is or would be charged by the utility providing electricity service in the service area where the electricity redistributor's building is located which rate shall only include demand, energy, fuel adjustment charges, and any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner.

(2) the electricity redistributor promptly passes on to any and all nonresidential energy users their proportionate share of the benefits, as specified hereunder; and

(3) the electricity redistributor complies with all the provisions and requirements of these rules and regulations.

(b) **Lease provisions.** No certification of eligibility shall be granted to an electricity redistributor that identifies electricity charges to its non-residential energy users unless such electricity redistributor, in the leases or other arrangements, as provided in §9-05(d), between such electricity redistributor and its non-residential energy users for the

demised premises within the building premises, shall provide that:

(1) where the electricity redistributor furnishes electricity to the premises leased or occupied by the non-residential energy user on a metered basis, then such energy user shall be billed for the actual electricity used, as measured by a properly installed and operating meter, at the actual rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where the electricity redistributor's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity rate, and further provide that (i) where there is no demand meter to measure such energy user's individual demand, then the electricity redistributor shall convert the total demand charge for the building to an average kilowatt hour (kwh) charge which shall be charged to such energy user, and (ii) if applicable, where such electricity rate includes a time-of-day rate and there is no time-of-day meter to measure such energy user's peak usage, then the electricity redistributor shall average the on-peak and off-peak demand and energy costs for the building and charge all non-residential energy users in the entire building premises at a rate equal to such electricity redistributor's average demand and energy costs per kw and/or kwh, as appropriate;

(2) (i) where the electricity redistributor furnishes electricity to the premises leased or occupied by the non-residential energy user on a non-metered basis, then such energy user shall be charged for electricity used in accordance with the provisions set forth in subparagraph (i)(A), (i)(B) or (i)(C) of this paragraph (2). The non-residential energy user's electricity charges or costs shall be determined by:

(A) a charge for electricity based upon a survey conducted by the electricity redistributor of the estimated electricity use by the non-residential energy user in the demised premises, at the rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where the electricity redistributor's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity rate, such survey shall be conducted by a technically qualified representative of the electricity redistributor within ninety (90) days of non-residential energy user's use or occupancy of the demised premises or the date of certification of eligibility under these rules and regulations for a pre-existing occupancy, the cost of which survey shall be paid for by the electricity redistributor;

(B) a charge for electricity based upon such energy users' prorata share of the actual cost of electricity for the entire building premises, which cost shall only include charges for demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner, as determined by a survey conducted by the electricity redistributor of the energy users' square foot area in the demised premises which shall not include any public, common and service areas, which square footage shall be measured by a recognized real estate standard consistently applied to all such energy users in the entire building premises, as a proportion of the square foot area in the entire building premises, plus a mark-up for administrative and operating costs equal to no more than twelve percent (12%) of such electricity cost, provided, however, that the non-residential energy user upon 60 days prior written notice, at its option and expense may, at any time, demand a change from prorating electricity charges in accordance with this sub-paragraph to determining such charges in accordance with a survey as described in subparagraph (i)(A) of this paragraph (2); or

(C) any other method which may be approved by the Commissioner and which otherwise complies with the requirements of these rules and regulations;

(ii) where the electricity redistributor uses a survey as described in §9-03(b)(2)(i)(A), either the electricity redistributor or the non-residential energy user may, upon forty five (45) days prior written notice, request subsequent surveys to be conducted as described therein, at any time because of material changes in conditions, which result from the addition or removal of equipment, machinery, or other electrical devices and which would reasonably result in a

change in electricity usage of greater than five (5) percent in the prior survey results, and where the electricity redistributor uses a survey as described in §9-03(b)(2)(i)(A) or (B), either the electricity redistributor or the non-residential energy user may, upon forty-five (45) days prior written notice, request subsequent surveys to be conducted as described therein, not more than once every year because of a disagreement with a prior survey, provided, however, that the party requesting any such survey shall pay the costs thereof, and if such parties do not agree on the results of the said subsequent survey, then, within fifteen (15) days after the receipt of the results of the aforementioned survey, the parties' respective representatives shall choose an independent representative, whose cost shall be shared equally by said parties, to make such determination which shall be controlling, and provided further that if the parties' respective representatives cannot agree on an independent representative within such fifteen (15) day period, then either party may apply to the Supreme Court of the State of New York in the judicial district where the demised premises is located for such appointment; and

(iii) where an electricity redistributor prorates electricity charges on the basis of: (A) a consumption survey, vacant space (i.e. tenant premises which are leased and occupied) shall be allocated to the electricity redistributor, or (B) square footage, vacant space (i.e. tenant premises which are not leased and occupied) shall not be included in the total square footage of the entire building premises, provided, however, public, common, and service area shall not be considered vacant space;

(3) electricity charges shall be clearly stated and shall be separately provided on bills or statements to non-residential energy users, and shall set forth the charge per-kwh and per-kw, if applicable, and the number of billing units used to compute such bills or statements;

(4) bills or statements for electricity charges to non-residential energy users shall be furnished at least bi-monthly;

(5) no charge for electricity used or consumed in any public, common or service area of the building premises shall be included in the electric bills or statements to non-residential energy users, but nothing herein prohibits electricity redistributors from otherwise recovering costs for electricity used or consumed in such areas;

(6) a copy of the applicable rate charges in the tariff of the utility providing service, or which otherwise would be providing service, to the electricity redistributor for resale or redistribution shall be provided to each non-residential energy user covered by these rules and regulations upon certification, and to each new non-residential energy user upon occupancy, and to each such user whenever the New York State Public Service Commission approves any changes thereto;

(7) any non-residential energy user, once each calendar year, upon ten days prior written notice, may inspect, during regular business hours, the electricity redistributor's records regarding the calculation of such energy user's electricity charges and the electricity consumption for the entire building premises, and, except where the electricity redistributor purchases electricity from an entity other than a utility, the electric bills rendered to the electricity redistributor for the entire building premises, for no less than the three preceding calendar years; and

(8) except in the case of surveys performed in accordance with §9-03(b)(2)(i)(A) or (B), any controversy relating to the measurement of electricity consumption, the calculation of electricity charges, and the billing of any electricity charges shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any award rendered by the arbitrator(s) may assess the expenses and fees of the arbitrator, together with costs and other reasonable expenses and fees, including attorney's fees, against the losing party. Judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, provided that the non-residential energy user shall pay to the electricity redistributor any sums or amounts in dispute subject to a refund with interest, payable at the rate of interest then authorized by the New York State Public Service Commission for utility customer deposits, as specified in Section 90.3 of Title 16 of the New York Code of Rules and Regulations, or any successor index published by the New York State Public Service Commission or Department of Public Service in connection with interest on utility customer deposits.

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Rules of the City of New York

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

66 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-04 Model Lease Rider.

Attached as Appendix A of this subchapter A is a model lease rider which complies with the requirements contained herein. In order to qualify for certification, an electricity redistributor which on a metered or on a non-metered basis identifies electricity charges to its non-residential energy users, shall incorporate the model lease rider, in any existing leases as provided in §9-05(d), and any new leases, or any extensions and renewals of leases or other arrangements, unless a waiver has been granted by the Commissioner. A waiver may be granted only if the lease or any lease extension or renewal or other arrangement substantially complies with the requirements of these rules and regulations. All the other terms, conditions and provisions of any lease between the electricity redistributor and the non-residential energy user, pertaining to the resale or redistribution of electricity or otherwise, which are not inconsistent with the model lease rider, shall be effective and controlling between the parties.

HISTORICAL NOTE

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28 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-05 Application Procedures.

Applications may be obtained from the Electricity Redistributor Certification Program, New York City Economic Development Corporation, 110 William Street, New York, NY, 10038. Complete applications must be submitted to the above address. All electricity redistributors which resell or redistribute electricity, must apply for and be certified under these rules and regulations in order to receive the benefits conferred under Local Law No. 49 of 1987. Where an electricity redistributor which does not identify electricity charges is issued a certification of eligibility and if such electricity redistributor commences to identify electricity charges on any bill or statement rendered to a non-residential energy user, then upon the happening of such event, the certification of eligibility shall be revoked, unless a new application for eligibility has been made and approval of the Commissioner has been obtained. At least 90 days prior to any such change in billing method, the electricity redistributor shall provide notice thereof to the Commissioner in writing by certified, first-class mail. Where an electricity redistributor is issued a certification of eligibility and if such electricity redistributor intends to sell or otherwise transfer its ownership interest in the building premises to another person, the certification of eligibility shall terminate upon the happening of such event, unless a new application for eligibility has been made and approval of the Commissioner has been obtained. Applications for certification shall be in the format prescribed by the Commissioner, which format, from time to time, may be modified or amended. An electricity redistributor shall submit a separate application for each building or more than one building covered by a single utility account, except as otherwise approved by the Commissioner. Any electricity redistributor applying for certification of eligibility hereunder shall submit to the Commissioner with each application a non-refundable

application fee of one hundred and fifty dollars ($150) by check or money order, payable to the order of the City Collector. An application shall not be processed unless complete and accompanied by the required fee. An electricity redistributor applying for a certification of eligibility shall provide such information deemed necessary or useful by the Commissioner and the application shall, without limitation, contain the following:

(a) where an electricity redistributor furnishes electricity on a metered basis, the technical specifications for the metering system installed in the demised premises and a certification that at least every five (5) years, each meter shall be calibrated for reliability and accuracy by a technically qualified testing service;

(b) an explanation of the method and basis for calculating charges to non-residential energy users, which shall include a provision preventing charges to such energy users from exceeding the maximum mark-up allowed hereunder;

(c) where the electricity redistributor on a metered or on a non-metered basis identifies electricity charges, a representation and warranty that the model lease rider or any substantially equivalent lease clause or provision as may be approved by the Commissioner is contained in leases or other arrangements for the use and occupancy of premises within the building premises, in accordance with the "Minimum Percentage Needed for Initial Certification" set forth in the schedule in §9-05(d), and that the electricity redistributor and any successor electricity redistributor shall continue to use the model lease rider or such previously approved lease clause or provision in such leases and any new leases, or renewals or extensions of leases, or any other arrangements for the use and occupancy of all non-residential premises within the building premises;

(d) where the electricity redistributor on a metered or on a non-metered basis identifies electricity charges, a certification that, at the time of the application, at least the minimum percentage of the square feet contained in the entire building premises, excluding the public, common or service areas, as measured by a recognized real estate standard consistently applied, is subject to the terms, conditions and provisions contained in the rider or any previously approved lease clause or provision, as set forth in the following schedule:

Fiscal Year	Minimum Percentage July 1-June 30 Needed for Initial Certification
1987/88	50%
1988/89	60%
1989/90	70%
1990/91	80%
1991/beyond	85%

(e) notwithstanding §9-05(d), a certification that the benefits shall be promptly passed on to all non-residential energy users according to their proportionate share of electricity consumed in the building premises and a description of how such benefits shall be passed on to each such non-residential energy user;

(f) where an electricity redistributor uses a combination of methods to determine electricity charges or electricity used within the same building premises, then the electricity redistributor shall demonstrate that the allocation of such charges or use among energy users in the same building premises is fair and equitable to non-residential energy users and the electricity redistributor charges no more than the applicable rate or charges as provided in §§9-03(b)(1) or (a);

(g) a list of the names and addresses of all non-residential energy users and a list of the commencement dates of the leases, renewals or extensions of leases, or other arrangements for the use and occupancy by such energy users and the expiration dates thereof; and

(h) a certification that the electricity redistributor at all times following the submission of its application for

certification and after the receipt of a certificate of eligibility, shall notify the Commissioner in writing of any material changes in the information provided in the application, which notification shall be provided by the electricity redistributor to the Commissioner by first-class, certified mail within five (5) days of any such material change.

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Rules of the City of New York

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

66 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-06 Notice of Certification or Revocation.

After a certification of eligibility is issued to an electricity redistributor, the Commissioner shall send a written notice of the certification to the utility supplying energy or delivery services to such electricity redistributor, the electricity redistributor and the Department of Finance of the City of New York. Within ten (10) days of receipt of such notice, the electricity redistributor shall mail or deliver a copy of the notice of certification to each of the certified electricity redistributor's nonresidential energy users and shall obtain a written receipt therefor. Where a certification of eligibility is denied, revoked or revised, the Commissioner shall specify the grounds therefor in writing. Prior to such revocation, the electricity redistributor shall be given an opportunity to be heard. In the case of revocation, revision, or termination as set forth in §9-05, the Commissioner shall send written notice thereof to the utility, the electricity redistributor and the Department of Finance of the City of New York. Within ten (10) days of receipt of such notice, the electricity redistributor shall mail or deliver a copy of such notice to each of the non-residential energy users affected and shall obtain a written receipt therefor.

HISTORICAL NOTE

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30 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-07 Books and Records.

(a) An electricity redistributor which receives certification under these rules and regulations shall maintain, for a period of six (6) years, copies of all records pertaining to (1) the distribution of the City utility tax and sales tax benefits conferred by Local Law No. 49 of 1987 to non-residential energy users, (2) copies of all leases, renewals, extensions or other arrangements for the use and occupancy of all non-residential premises within the building premises, (3) copies of bills or statements rendered to each non-residential energy user for electricity sold to such user, (4) the results of any and all meter readings and meter tests, and (5) copies of any and all records, books, ledgers, and accounts pertaining to the purchase of electricity by such electricity redistributor and resale to non-residential energy users and other tenants in a building for which the electricity redistributor has been certified hereunder and proof of the notification required under §9-06.

(b) The Commissioner, or his/her designee, and the New York City Finance Department shall have the right to inspect any and all records described in subdivision (a) of this section, and the electricity redistributor shall provide access thereto upon request, for the purpose of making audits, copies, or transcriptions.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-08 Additional Penalties.

In addition to any other civil or criminal penalties provided in the relevant provisions of the General Corporation Tax, Unincorporated Business Income Tax, Financial Corporation Tax and Utility Tax, any knowing false statement made in an application for a Certificate of Eligibility is a misdemeanor under Section 210.45 of the Penal Law.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-09

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-09 Repayment of Improperly Obtained Benefits.

The Corporation Counsel of the City of New York may maintain an action in any court of competent jurisdiction to recover an amount equal to any benefits provided pursuant to Local Law No. 49 of 1987 and the provisions of these rules and regulations which are improperly obtained.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-10 Material Misrepresentation, Misstatements and Omissions.

(a) An electricity redistributor's refusal to provide factual information or to cooperate with the Commissioner in the review of the facts and circumstances upon which a determination of eligibility, or of continued eligibility, for certification hereunder is to be based may constitute grounds for denial of an electricity redistributor's eligibility for certification, or revocation of a previously approved certification, under these rules and regulations.

(b) The Commissioner may deny issuance of a certificate of eligibility, under these rules and regulations, if an application is found to contain material misrepresentations, misstatements or omissions.

(c) The Commissioner may suspend or revoke a certificate of eligibility if an electricity redistributor is found to have made material misrepresentations or misstatements or omissions concerning the prior, current or future status of its continued eligibility for certification under these rules and regulations.

HISTORICAL NOTE

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34 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-11

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER A ENERGY OFFICE

§9-11 Actions of City Employees.

Employees and agents of the City whose duties require them to take action in connection with these rules and regulations shall perform such duties, subject to the lawful direction of their supervisors and appropriate public officers, in accordance with these rules and regulations. However, noncompliance by such employees or agents with the requirements of these rules and regulations shall not be deemed to void any obligation of, or to waive any requirement imposed on an electricity redistributor or to excuse any noncompliance by an electricity redistributor with the provisions hereof or of any law. Such noncompliance shall not create any right of relief from the City or its employees or agents in favor of any person adversely affected thereby.

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Rules of the City of New York

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

66 RCNY 9 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

APPENDIX A*1 MODEL LEASE RIDER

APPENDIX A*1 MODEL LEASE RIDER

Landlord shall furnish electricity to Tenant on a "non-metered" or on a "metered" basis, as follows:

(a) **Metered.** If and so long as Landlord provides electricity to the demised premises on a metered basis, then Tenant shall pay to Landlord, as additional rent hereunder, for the actual electricity used, as measured by a properly installed and operating meter, at the rate that would be charged by the utility providing electricity service for resale or redistribution in the service area where the building premises is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of Business Services, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity rate. If there is no demand meter to measure tenant's demand, then Landlord shall convert the total demand charge for the building to an average kilowatt hour (kwh) charge to Tenant, and, if applicable, where such electricity rate includes a time-of-day rate and there is no time-of-day meter to measure Tenant's peak usage, then Landlord shall average the on-peak and off-peak energy and demand costs for the entire building, and charge all the tenants in the entire building premises (except residential tenants) only Landlord's average energy and demand costs per kilowatt and/or kilowatt hour, as appropriate.

(b) **Non-metered.** If and so long as Landlord provides electricity to the demised premises on a non-metered basis and Landlord bills Tenant for specific electricity charges, then Tenant shall pay to Landlord, as additional rent hereunder, for electricity used as determined in accordance with the provisions set forth in paragraph (1)(i) or (ii) of this

subdivision (b):

(1) (i) Landlord shall charge Tenant for electricity based upon a survey of the estimated electricity use by Tenant in the demised premises which shall not include electricity consumed in any public, common and service areas, at the rate that is or would be charged by the utility providing electricity service for resale or redistribution in the service area where Landlord's building is located, which rate shall only include demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of the New York City Department of Business Services, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity rate; or

(ii) Landlord shall charge Tenant for electricity based upon a survey of Tenant's pro rata share of the actual cost of electricity for the entire building premises, which cost shall only include charges for demand, energy, fuel adjustment charges, any taxes and tax surcharges thereon, and any other utility charges which are specifically authorized by the Commissioner of the New York City Department of Telecommunications and Energy, as determined by Tenant's square foot area in the demised premises which shall not include any public, common and service areas, which square footage shall be measured by a recognized real estate standard consistently applied to all tenants in the entire building premises, as a proportion of the square foot area in the entire building premises, plus a mark-up for administrative and operating costs equal to ____ percent (not to exceed 12 percent) of such electricity cost prorated to Tenant.

(2) If a survey is used to determine the estimated electricity use by Tenant for the demised premises, then a survey shall be conducted by a technically qualified representative of Landlord, within ninety (90) days of Tenant's use or occupancy of the demised premises, or the date of issuance of a Certificate of Eligibility for the New York City utility tax and sales tax benefits conferred by Local Law No. 49 of 1987 for pre-existing occupancy, the cost of which survey shall be paid for by Landlord.

(3) If a survey is used to determine Tenant's prorata share of electricity charges or costs based upon Tenant's square foot area in the demised premises, excluding any public, common and service areas, then Landlord may rely on an existing area survey.

(4) Tenant, upon sixty (60) days prior written notice served on Landlord, at Tenant's option and expense and at any time, may demand a change from prorating electricity charges in accordance with subparagraph (b)(1)(ii) of this rider to determining such charges in accordance with a survey as described in subparagraph (b)(1)(i) of this rider.

(5) Where Landlord uses a survey as described in subparagraph (b)(1)(i) of this rider, either Landlord or Tenant, upon forty five (45) days prior written notice, may request subsequent surveys to be conducted as described herein, at any time because of material changes in conditions, and where Landlord uses a survey as described in subparagraph (b)(1)(i) or (ii) of this rider, either Landlord or Tenant, upon forty five (45) days prior written notice, may request subsequent surveys to be conducted as described herein, not more than once annually because of a disagreement with a prior survey. The party requesting any such survey shall pay the costs thereof. If Landlord and Tenant do not agree on the results of the said subsequent survey, then, within fifteen (15) days after the receipt of the results of the written survey report, the parties respective representatives shall choose an independent representative, whose cost shall be shared equally by the parties, to make such determination which shall be controlling. If the parties' respective representatives cannot agree on an independent representative within such fifteen (15) day period, then either party may apply to the Supreme Court of the State of New York in the judicial district where the demised premises is located for such appointment. For the purposes of this subparagraph, the term "material changes in conditions" shall mean changes in Tenant's electricity consumption: (i) which result from the addition or removal of equipment, machinery, or other electrical devices, and (ii) which would reasonably result in a change in electricity usage of greater than five (5) percent in the results of a prior survey.

(6) If Landlord prorates electricity charges on the basis of: (i) a use survey, vacant space (i.e. tenant premises which are not leased and occupied) shall be allocated to Landlord; or (ii) square footage, vacant space (i.e. tenant

premises which are not leased and occupied) shall not be included in the total square footage of the entire building premises, provided, however, public, common, and service areas shall not be considered vacant space.

(c) **General conditions.** If Landlord furnishes electricity to Tenant, Landlord shall continue to furnish electricity during the entire term of this Lease and any extensions or renewals thereof, provided Tenant is not in default of payment for electricity charges hereunder.

Except for the surveys described in subparagraphs (b)(1)(i) and (ii) and (2) of this rider, if Landlord and Tenant do not agree on any matter relating to the measurement of electricity consumption, the calculation of the electricity charges or the billing of any electricity charges to Tenant, the controversy shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Tenant shall pay to Landlord any sums or amounts in dispute subject to a refund by Landlord with interest payable at the rate specified in Section 90.3 of Title 16 of the New York Code of Rules and Regulations (New York State Department of Public Service; Customer Deposits-Electric Corporations), or any successor index published by the New York State Public Service Commission or Department of Public Service in connection with interest on utility customer deposits. Any award rendered by the arbitrator(s) may assess the arbitrator's expenses and fees, together with the costs and other reasonable expenses and fees, including attorney's fees, against the losing party. Judgment upon the award rendered by arbitrator(s) may be entered in any court having jurisdiction thereof.

Landlord shall clearly and separately state electricity charges for the demised premises, excluding any public, common or service area of the building premises, on bills or statements to Tenant, including the charge per kilowatt hour and per kilowatt, if applicable, and the number of billing units used to calculate such bill or statement. Such bills or statements shall be in writing and furnished to Tenant at least bi-monthly. Upon the execution of this Lease, Landlord shall furnish to Tenant a copy of the applicable rate charges in the tariff of the utility providing electric service to the building premises and any revisions or modifications thereto, as approved by the New York State Public Service Commission. Tenant, once each calendar year, upon ten (10) days prior written notice, may inspect, during regular business hours, at Landlord's office, Landlord's records regarding the calculation of Tenant's electricity charges and the electricity consumption for the entire building premises, and the electric bills rendered to Landlord for the entire building premises, for no less than the three (3) preceding calendar years.

FOOTNOTES

1

[Footnote 1]: * Formerly Appendix A to Chapter 1 of Title 67. Renamed as Title 66 Appendix A to Chapter 9, Subchapter A, LL 61/1991 eff. July 1, 1991.

Rules of the City of New York

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

66 RCNY 9-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-21 Definitions.

City. "City" means the City of New York.

City's Consumers. "City's consumers" means any retail consumer of NYCPUS receiving electric service pursuant to NYCPUS Service Tariff.

Con Edison. "Con Edison" means Consolidated Edison Company of New York, Inc.

Distribution Agent or Delivery Agent. "Distribution Agent" or "Delivery Agent" means Con Edison.

EDPAB. "EDPAB" means New York State Economic Development Power Allocation Board.

Fitzpatrick Delivery Agreement. "Fitzpatrick Delivery Agreement" means the agreement between the City of New York and Consolidated Edison Company of New York, Inc., governing the delivery of Fitzpatrick economic development power, dated October 23, 1987, as amended, and any renewals or amendments thereof.

Industrial Economic Development Consumer. "Industrial Economic Development Consumer" means a City's Consumer who (1) applies to, and is approved by, NYCPUS for service; (2) meets the criteria established herein, including the Lease and Operating Agreement or the Fitzpatrick Delivery Agreement, whichever is applicable; and (3) is approved by EDPAB and NYPA, as may be required, pursuant to 21 NYCRR Part 370 and Part 460.

Lease and Operating Agreement. "Lease and Operating Agreement" is between the City of New York and Consolidated Edison Company of New York, Inc., governing the delivery of Niagara/St. Lawrence hydropower, dated July 1, 1985, and any renewals or amendments thereof.

NYPA. "NYPA" means the Power Authority of the State of New York (also known as the New York Power Authority).

NYCPUS. "NYCPUS" means the New York City Public Utility Service.

NYCRR. "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

HISTORICAL NOTE

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37 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-22 General Terms and Conditions.

The following terms and conditions shall apply to electric service rendered by the New York City Public Utility Service:

(a) **Applicable criteria.** Electricity service shall be supplied to City's Consumers in accordance with the following, as such may be amended from time to time, and to the extent of availability of power and energy from NYPA and access to necessary transmission and distribution facilities:

(1) the applicable service tariffs;

(2) the City's Application for Electric Service to NYPA, executed by the City on August 12, 1985, and the accompanying NYPA Service Tariffs, as amended;

(3) the Lease and Operating Agreements and Fitzpatrick Delivery Agreement;

(4) Chapter IX and X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 21 NYCRR Parts 370 and 460; and

(5) any and all other applicable laws, rules, regulations, tariffs, rulings, orders, directives, and guidelines.

(b) **Rendition of service.** (1) **Industrial Economic Development Consumers.** Potential Industrial Economic Development Consumers desiring to receive service from NYCPUS will make an application for service to NYCPUS in such form and at such times as prescribed by NYCPUS. Applications will be processed and approved by NYCPUS in accordance with the requirements described herein and, to the extent applicable, 21 NYCRR Part 370 and 460, the applicable NYCPUS service tariff, and any regulations or guidelines adopted by NYCPUS. All allocations of industrial economic development power shall be subject to approval by EDPAB and/or NYPA as required by law. Industrial Economic Development Consumers shall be required to enter into a power service agreement with NYCPUS and shall provide such information as may be required, from time to time, by NYCPUS and its Delivery Agent. Such City's Consumers shall be required to adhere to any and all applicable terms and conditions of the City's Delivery Agent.

(2) **Other City's Consumers.** NYCPUS shall specify the service classifications eligible to receive power and energy under applicable tariffs, in accordance with the requirements established by NYPA. Such City's Consumers shall be required to adhere to any and all applicable terms and conditions of the City's Distribution Agent.

(c) **Load shapes and load factors.** (1) Deliveries of power and energy to City's Consumers, except for Industrial Economic Development Consumers, shall conform to the load shape of the class of City's Consumers being served. Such power and energy which does not so conform may, at the City's option, be reflected as adjustments in future deliveries or be subject to rejection by the Distribution Agent.

(2) Industrial Economic Development Consumers which purchase electricity from both the City and the City's Delivery Agent shall be supplied by both the City and the Delivery Agent at the same load factor.

(d) **Liability.** (1) The City and NYCPUS shall not be liable in the event that the supply of electric service under any of the following tariffs is interrupted or irregular or defective or fails from causes beyond their control or through ordinary negligence of their employees or agents. The City and NYCPUS shall not be liable for any injury, casualty or damage resulting in any way from the supply or use of electricity or from the presence or operation of any structures, equipment, wires, pipes, appliances or devices on the premises of City's Consumers or otherwise from any failure of the generation, transmission, or distribution system, except injuries or damages resulting from gross negligence on the part of NYCPUS.

(2) NYCPUS will endeavor to furnish electric service continuously except:

(i) for interruptions or reductions due to uncontrollable forces;

(ii) for temporary interruptions or reductions which, in the opinion of NYCPUS, or its suppliers and agents, are required for power system protection or for providing temporary emergency assistance to interconnecting systems; and

(iii) for temporary interruptions or reductions, which, in the opinion of NYCPUS, or its suppliers or agents, are necessary or desirable for the purpose of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. NYCPUS, except in case of emergency as determined by it, will give City's Consumers, to the extent practicable, reasonable advance notice of such temporary interruptions or reductions and will exercise due diligence to remove the cause thereof.

(e) **Distribution and customer billing.** (1) **Distribution Agent.** All City's Consumers shall be customers of NYCPUS, not the Distribution Agent, with respect to the power and energy supplied under the following service tariffs. The Distribution Agent shall be responsible only for the local transmission and distribution of power and energy to City's Consumers, and such metering, billing and/or collection functions as described herein and in the Lease and Operating Agreement or the Fitzpatrick Delivery Agreement, whichever is applicable.

(2) **Rates and charges.** In addition to the rates and charges specified in the applicable tariffs, City's Consumers shall be required to pay, or reimburse the City, for any and all metering costs and any and all charges incurred by NYCPUS as a direct result of interconnecting City's Consumers' facilities with those of Delivery Agent and supplying

electricity to said City's Consumers.

(3) **Deposits.** Thirty days prior to the initiation of service, Industrial Economic Development Consumers shall be required to pay NYCPUS a deposit equal to two months estimated billings, pursuant to 21 NYCRR section 451.1. The deposit shall be held by NYCPUS for a period of two years. If, after a two year period, City's Consumers are not delinquent in the payment of bills, the deposit shall be refunded promptly, no later than the next bill for service after such two year period, without prejudice to NYCPUS' right to require a future deposit if deemed necessary. Interest shall be paid on the amount deposited at a rate prescribed annually by NYPA.

(4) **Payment of bills and late payment charges.** (i) On or about the tenth day of each month, Industrial Economic Consumers shall receive an estimated bill statement for the monthly billing period, indicating the number of kilowatts and kilowatt hours estimated to be supplied by NYCPUS during the billing period and the rates and costs therefor. For each subsequent bill, NYCPUS will reconcile the estimated usage with the actual usage for the prior billing period and the reconciliation amount shall be reflected in the estimated bill for the current month. Upon termination of service, a final reconciliation of any amounts owed by City's Consumers or to be paid by NYCPUS shall be made. NYCPUS may also make such reconciliation or adjustments to its rates and charges as are authorized hereunder or in the applicable NYCPUS Service Tariff. Where an Industrial Economic Development Consumer is a retail customer of both NYCPUS and its Distribution Agent, it shall receive separate bill statements with regard to each supplier.

(ii) City's Consumer (other than Industrial Economic Development Customers) shall be billed each month by the City, through its Distribution Agent. Bills rendered by NYCPUS, through its Distribution Agent, shall be payable to said agent in accordance with all applicable rules and regulations of the Distribution Agent.

(iii) Payment for bill statements rendered by NYCPUS to Industrial Economic Development Consumers is due on presentation, if hand delivered, or three days after the mailing of the bill and is payable by mail, to any duly authorized collector thereof, or otherwise as may be specified in the bill statement. A late payment charge at the rate of one and one half percent (1 1/2%) per monthly billing period, or such other rate as approved by NYPA, may be applied to the account of any Industrial Economic Development Consumer which is delinquent in the payment of its bills to NYCPUS. The charge will be applied to all amounts billed, including arrears, and unpaid late payment charge amounts applied to previous bills, which are not received on or before a date specified on the bill. This includes any additional amounts in cases where NYCPUS has underbilled, or failed to bill, because the City's Consumer was receiving service through tampered equipment. The date so specified shall not be less than 20 days after the date due. The late payment charge will apply to the amounts found to be owed for each monthly billing period, including any previous late payment charges. The late payment charge will not be applied to the account of any customer who can demonstrate neither responsibility for the tampering, nor knowledge that service was received through tampered equipment.

(5) **Discontinuance of service.** (i) NYCPUS may assign to its Distribution Agent the right to discontinue service or bring any legal action, as specified in this subparagraph, and the Distribution Agent may take any such action on behalf of NYCPUS, consistent with the distribution agreement between the City and said agent. Notwithstanding the foregoing, NYCPUS reserves the right to discontinue service and/or to take any other action permitted by law, consistent with the applicable Lease and Operating Agreement or City's Consumer who fails to make full and timely payments of all amounts due, including amounts due for late payment charges hereunder. In the event that NYCPUS, or its Distribution Agent, discovers tampering with equipment or meters, NYCPUS reserves the right to discontinue service to any City's Consumer and/or bring any legal action consistent with said Lease and Operating Agreement or Fitzpatrick Delivery Agreement, to recover damages, including reasonable attorneys fees and costs, or to take such other action as may be permitted by law.

(ii) NYCPUS may discontinue service to an Industrial Economic Development Consumer for failure to pay any and all amounts due within thirty-five (35) days after payment was due. Termination will not occur until at least fifteen (15) days after written notice has been personally served upon the Industrial Economic Development Consumer or at least fifteen (15) days after NYCPUS mails written notice by registered or certified letter to such customer at the

address at which service is received. If an Industrial Economic Development Consumer has requested in writing to NYCPUS to have an alternate address for billing purposes, written notice shall be sent both to the alternate address and to the premises where service is received. Failure to exercise any of these termination conditions by NYCPUS shall not constitute a waiver of any rights and powers set forth herein.

(6) **Determination of demand.** Demand shall be determined in accordance with the applicable provisions of the Delivery Agent's service tariffs and any contract between NYCPUS and its customers.

HISTORICAL NOTE

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38 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 9-23

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-23 Firm Industrial Economic Development Nuclear Service (Service Tariff No. 4).

(a) **Availability.** This rate shall be available to specific industrial economic development consumers designated by NYCPUS and approved by NYPA or EDPAB, as required by law. (See Terms and Conditions.)

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Non-time-of-day service.** To customers with maximum monthly billing demands of less than 1500 KW. Customers billed under this rate whose monthly maximum demands are 1500 KW or greater for two consecutive months shall thereafter be billed under Time-of-Day Service.

[See tabular material in printed version]

(ii) Energy charge

(A) High Tension Service 21.55 mills per KWh

(B) Low Tension Service 23.29 mills per Kwh

(2) **Time-of-day service.** To customers with maximum monthly billing demands of 1500 KW or greater. Customers billed under this rate whose monthly maximum demands do not exceed 900 KW for 12 consecutive months

shall thereafter be billed under Non-Time-of-Day Service.

[See tabular material in printed version]

(ii) Energy charge.

(A) High Tension Service 21.55 mills per KWh

(B) Low Tension Service 23.29 mills per KWh

(d) **Provisions applicable to rate.** (1) **Purchased power adjustment factor.** The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR Section 452.4.

(2) **Billing demand.** Billing demand shall be the greater of:

(i) such consumer's maximum 30-minute integrated demand established during the billing period; or

(ii) 75 percent of such consumer's contract demand. Contract demand shall be the maximum amount of power contracted for in the power service agreement between a City's consumer and NYCPUS.

(3) **Taxes.** The rates and charges under this Rate Schedule shall be increased by the applicable rate of gross receipts taxes, sales taxes and such other taxes as NYCPUS may be required to collect by law.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-24

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-24 Firm Hydroelectric Service (Service Tariff No. 33).

(a) **Availability.** This rate shall be available to residential consumers or such other retail consumers as may be designated by NYCPUS and approved by PASNY.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Energy charge:** $.007861 per kwh

(2) **Distribution charge:** The distribution charge as provided in the Lease and Operating Agreement between the City and its Distribution Agent.

(d) **Provisions applicable to rate.** Purchased power adjustment factor. The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-25

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-25 Firm Industrial Economic Development Hydroelectric Service (Service Tariff No. 34).

(a) **Availability.** This rate shall be available to specific industrial economic development consumers designated by NYCPUS and approved by PASNY. See Terms and Conditions.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available.

(c) **Monthly rate.** (1) **Contract demand charge:** $2.81 per kw

(2) **Energy charge:** $.00243 per kwh

(3) **Distribution charge:** The distribution charge as provided in the applicable delivery tariff on file with, and approved by, the New York State Public Service Commission and Federal Energy Regulatory Commission.

(d) **Provisions applicable to rate.** (1) **Purchased power adjustment factor.** The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

(2) **Contract demand.** The maximum kilowatts contracted for in the contract between a City's Consumer and NYCPUS.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 9-26

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 9 ENERGY SERVICES

SUBCHAPTER B RATES AND CHARGES

§9-26 Interruptible Hydroelectric Service (Service Tariff No. 36).

(a) **Availability.** This rate shall be available to residential consumers or such other retail consumers as may be designated by NYCPUS and approved by PASNY.

(b) **Character of service.** Alternating current, sixty hertz, voltage as available. Interruptible energy will be subject to its availability from PASNY's power sources. Transmission of interruptible energy will be subject to availability of transmission capacity in the systems of PASNY and its wheeling agents.

(c) **Monthly rate.** (1) **Energy charge:** $.00926 per kw.*2

(2) **Distribution charge:** The distribution charge as provided in the Lease and Operating Agreement between the City and its Distribution Agent.

(d) **Provisions applicable to rate.** Purchased Power Adjustment Factor. The rate under this tariff shall be adjusted by any changes in the delivered cost of purchased power, pursuant to 21 NYCRR §452.4.

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FOOTNOTES

2

[Footnote 2]: * Includes a component of $.00473/kwh to regain start-up and administrative costs of $1,569,000 for the NYCPUS for fiscal year ending June 30, 1986 (FY86). The $.00926/kwh rate shall be effective until the entire $1,569,000 has been billed to retail customers. If the entire $1,569,000 is billed to customers previous to July 1, 1986, the $.00926/kwh rate shall become $.00453/kwh ($.00926-$.00473) and such $.00453/kwh rate shall remain in effect for all lingering retail billings to be collected before July 1, 1986. Starting on the later of (a) the first billing date after which the full $1,569.00 of FY86 start-up and administrative cost has been billed to customers or (b) the first billings in the month of May 1986, the monthly energy rate shall become $.00488/kwh. The relevant monthly energy rate shall be subject to adjustment to reconcile amounts billed in prior months for start-up and administrative costs to the extent that NYCPUS has overcollected such start-up and administrative costs.

Rules of the City of New York

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

66 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-01 Applicability.

These regulations apply to all contracts let by the City, as provided herein.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-02 Definitions.

Whenever used in these regulations, the following terms shall have the following meanings:

Age discrimination. "Age discrimination" means discrimination in employment related decisions because an individual is between the ages of 18 and 70.

Agency head. "Agency head" means the Commissioner, Chair or Director of any contracting agency.

Applicant. "Applicant" means an applicant for or recipient of City assistance for a construction project or other participant in a program related to City assistance for a construction project.

Citizenship status. "Citizenship status" means the citizenship of any person, or the immigration status of any person lawfully residing in the United States who is not a citizen or national of the United States.

City. "City" means the City of New York.

City assistance. "City assistance" means any financial assistance involving a construction project in the form of a grant, loan, contract, insurance or guarantee, or any other arrangement by which the City provides or otherwise makes available assistance in the form of:

(1) funds;

(2) services of city personnel;

(3) tax exemptions and tax abatements; or

(4) real or personal property or any interest in the use of such property, including:

(i) transfers or leases of such property for less than fair market value or for a reduced consideration; and

(ii) proceeds from a subsequent transfer or lease of such property if the City's share of its fair market value is not returned to the City.

Compliance. "Compliance" means a contractor having acted in accordance with the requirements of E.O. 50 (§10-14) and these regulations.

Commissioner. "Commissioner" means the Commissioner of the Department of Business Services.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by the City, except contracts for architectural, engineering or drafting services.

Contract. "Contract" means any written agreement, purchase order or instrument in which the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing:

(1) Unless otherwise required by law, the term "contract" shall include any City grant, loan, guarantee or other City assistance for a construction project.*1

(2) The term "contract" shall not include:

(i) contracts for financial or other assistance between the City and a government or government agency;

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City, or consisting thereof; or

(iii) employment by the City of its officers and employees which is subject to the equal employment opportunity requirements of applicable law.

Contracting agency. "Contracting agency" means any administration, board, bureau, commission, department, or other governmental agency of the City, or any official thereof, authorized on behalf of the City to provide for, enter into, award, or administer contracts.

Contractor. "Contractor" means a person, including a vendor or applicant, who is a party or a proposed party to a contract with a contracting agency, first-level subcontractors of supply and service contractors, and all levels of subcontractors of construction contractors and applicants.

Director. "Director" means the Director of the Office.

Division. "Division" means the Division of Labor Services.

Economically disadvantaged person. "Economically disadvantaged person" means a person who at the time of application for entrance into a training program is either:

(1) a resident of a single person household who receives

(i) wages not in excess of 70 percent of the lower-level "urban family budget" for the City as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or

(ii) receives cash welfare payments under a Federal, State, or local welfare program; or

(2) a member of a family which

(i) receives a family income less than 70 percent of the lower-level "urban family budget" for the City as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or

(ii) receives cash welfare payments under a Federal, State, or local welfare program; or

(3) a Vietnam-era veteran as defined by applicable Federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(4) a displaced homemaker who has not been in the labor force for 5 years but has during those years worked in the home providing unpaid services for family members and was

(i) dependent on public assistance or the income of another family member but is no longer supported by that income, or

(ii) receiving public assistance for dependent children in the home and that assistance will soon be terminated.

Employment report. "Employment report" means a report filed by a contractor containing information concerning its workforce composition, employment and salary practices, policies, programs, collective bargaining agreements, and pending lawsuits or consent decrees or court orders. The contractor may at its option submit as part of its employment report self-evaluation and transition plans written pursuant to §504 of the Rehabilitation Act of 1973 or its affirmative action plan in lieu of those sections of the employment report which request information contained in said plan.

Employment update report. "Employment update report" means a periodic report required to be filed by a contractor when the Office identifies underutilization in a job group or employment policies and practices which mitigate against equal employment opportunity.

Equal employment opportunity. "Equal employment opportunity" means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment except as provided by law.

Handicapped individual. "Handicapped individual" means any person who has or had a physical or mental impairment that substantially limits one or more major life activities, and has a record of such an impairment.

(1) The term "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin, and endocrine; or a mental or psychological disorder, such as mental retardation, developmental disability, organic brain syndrome, emotional or mental illness and specific learning disabilities. It includes, but is not limited to, such diseases and conditions as orthopedic, visual speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, alcoholism, substance abuse, and drug addiction.

(2) The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) The term "has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The term "otherwise qualified" means a handicapped person, who, with reasonable accommodation can satisfy the essential requisites of the job or benefit in question, and in the case of alcoholism, substance abuse and drug addiction, is recovering and currently free of abuse of same.

(5) The term "reasonable accommodation" means such accommodation to an employee's or prospective employee's physical or mental impairment as shall not cause undue hardship in the conduct of the contractor's business. The contractor shall have the burden of demonstrating such hardship.

Job group(s). "Job group(s)" means a group of jobs having similar content, wage rates, and opportunities;

Minorities. "Minorities" means Blacks, Hispanics (non-European), Asians, and Native Americans (American Indians, Eskimos, Aleuts);

Noncompliance. "Noncompliance" means a contractor having failed to act in accordance with E.O. 50 (§10-14) and these regulations;

Person. "Person" means any natural person, corporation, partnership, sole proprietorship, or unincorporated agency;

Prime contractor. "Prime contractor" means any person who is a party or proposed party to a contract with a contracting agency;

Subcontractor. "Subcontractor" means any person having an agreement or arrangement or proposed agreement or arrangement with a contractor in which any portion of the contractor's duty to perform work is undertaken or assumed by such person; provided that a supplier of unfinished products to a supply and service contractor needed to produce the item contracted for shall not be considered a subcontractor;

Trainee. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by the Division and, where required by law, the New York State Department of Labor and the United States Department of Labor, Office of Apprenticeship and Training;

Underutilization. "Underutilization" means a statistically significant disparity between the employment of members of a racial, ethnic, or sexual group and their availability as determined by the Office's utilization analysis.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-02.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Enforcement of provisions pertaining to City assistance is deferred pending the examination by the Office of the Corporation Counsel of the legal issues concerning applicability of Executive Order #50 (1980)(§10-14) and these regulations to numerous programs receiving City assistance.

Rules of the City of New York

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

66 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-03 Covered Contracts.

(a) **General.** (1) All contractors doing business with the City without regard to the dollar amount or source of funding of the contract must be equal employment opportunity employers.

(2) Contractors whose contracts are funded in whole or in part by federal or state funds must also meet the standards and applicable legal requirements of the funding source. To the extent that federal or state requirements are different from the requirements of E.O. 50 (§10-14) and these regulations, the requirements of E.O. 50 (§10-14) and these regulations shall apply, except in those circumstances where application of the City's requirements would make it impossible for the contractor to meet the program requirements of the funding source.

(b) **Submission requirements.** (1) Except as provided herein, no contracting agency shall enter into a contract with any contractor unless such contractor's Employment Report is first submitted to the Division for its review.

(i) Before the contract may be awarded, each proposed supply and service contractor for a contract in excess of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services who employs 50 or more employees is required to submit to the Division an Employment Report for the facility or establishment where the contract will be performed and where the Division deems necessary for a full review, the principle place of business or corporate headquarters;

(ii) Before the contract may be awarded, each proposed construction contractor for a contract in excess of $1 million is required to submit to the Division an Employment Report for its principal place of business or headquarters, the construction site where the contract will be performed and other non-City funded construction sites of the contractor within the City;

(iii) A contracting agency may award a requirements contract or an open market purchase agreement covered by these regulations prior to review by the Division of the contractor's Employment Report but may not make a purchase order against such contract or agreement until it has first transmitted such contractor's Employment Report to the Division and the Division has completed its review.

(2) Unless otherwise provided by federal or state law, an Employment Report shall not be required for

(i) a construction contract in the amount of $1 million or less or construction subcontract in the amount of $750,000 or less; or

(ii) a supply and service contract or subcontract in the amount of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services or less or where the contractor employs less than 50 employees. In such cases the contracting agency shall promptly notify the Office in writing prior to the award of such a contract. To determine the applicability of this paragraph (2) to a City-assisted construction contract, the amount or value of the City assistance shall govern; or

(iii) a contract for a procurement of information technology that is within the small purchase limits established by rule of the Procurement Policy Board.

(3) Unless otherwise provided by law, an Employment Report shall not be required on a preaward basis for an emergency contract awarded pursuant to Executive Order No. 2 (2nd) (1970), as amended, the City Charter §315 or the General Municipal Law §103(4). In such cases, the contracting agency shall promptly notify the Office of the award of such a contract by submission of a copy of the documentation submitted to the Law Department. In the event of an emergency not covered under the foregoing provisions, the contracting agency head will notify the Director in writing requesting a waiver of the preaward submission requirements. Said request must contain a statement of reason for such waiver request.

(4) Unless otherwise required by law, an Employment Report shall not be required for a covered supply and service contract with a contractor who has received a valid certificate of compliance with the equal employment requirement of applicable law as follows:

(i) where a contractor has received a Certificate of Equal Employment Compliance issued after a desk audit by an appropriate federal or state agency in the preceding 12 months, the proposed contractor shall complete and submit the general information section of the Employment Report with a copy of such certificate of compliance to the Division;

(ii) where a contractor has been desk audited by an appropriate government agency and found to have deficiencies with respect to equal employment compliance and has agreed, within the preceding 12 months, to correct these deficiencies, the contractor may submit the general information section of the Employment Report with documentation regarding the finding of deficiencies and corrective measures taken. The Division may thereafter, in its discretion, require the submission of all reports concerning implementation of corrective measures or a completed Employment Report; and

(iii) where a contractor has been reviewed by the Division and issued a certificate of compliance in the preceding 12 months, the contractor shall complete and submit the general information section of the Employment Report with a copy of such certificate of compliance to the Division.

(5) Unless otherwise required by law, the Division may in its discretion waive the submission of an Employment

Report where the contractor is in the process of being desk audited by an appropriate government agency and grant the contractor a conditional approval. Upon completion of the audit, the contractor must advise the Bureau of the results of the audit. The Division may thereafter in its discretion, require the submission of all reports concerning implementation of corrective measures or a completed Employment Report.

(6) The contractor may at its option submit its existing Affirmative Action Plan ("Plan") in lieu of parts of the Employment Report, provided that the Plan contains essentially the same information as those portions of the Employment Report.

(7) The contractor may at its option submit copies of its self-evaluation and transition plans written pursuant to §504 of the Rehabilitation Act of 1973.

(8) The Director may, on the written request of the contracting agency head, waive the submission requirements of E.O. 50 (§10-14) and these regulations where the agency head certifies that:

(i) the contracting agency has been unable to secure the submission of an employment report after making diligent efforts; and

(ii) the proposed contractor is the sole provider of a unique service, supply or labor; or

(iii) because of the unique circumstances of the contract it would not be in the public interest to require submission of an Employment Report prior to the award of the contract.

(9) Failure to file timely, complete and accurate reports as required by E.O. 50 (§10-14) and these regulations constitutes noncompliance with E.O. 50 (§10-14) and these regulations. The Director may direct the contracting agency head to impose sanctions authorized by E.O. 50 (§10-14) and these regulations in connection with such noncompliance. The Division shall notify the contracting agency in writing of any such failure as soon as practicable.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-03.

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Subd. (b) par (1) subpar (i) amended City Record Nov. 17, 2004 §1, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (1) subpar (ii) amended City Record Nov. 17, 2004 §2, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (2) subpar (i) amended City Record Nov. 17, 2004 §3, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (2) subpar (ii) amended City Record Nov. 17, 2004 §4, eff. Dec. 17, 2004. [See Note 2]

Subd. (b) par (3) amended City Record Nov. 17, 2004 §5, eff. Dec. 17, 2004. [See Note 2]

DERIVATION

Subd. (b) par (2) subpar (ii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See Note 1]

Subd. (b) par (2) subpar (iii) added City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 15, 1997:

The Department of Business Services, acting pursuant to authority granted by section 1305 of the City Charter, is amending the rules of its Division of Labor Services to provide that contracts for procurements of information technology that come within small purchase limits established by the Procurement Policy Board in July of 1997 are exempt from those provisions of section 1-14 which require the filing of employment reports. The procurement rules were changed primarily to enable agencies to obtain contractors to assist in correcting flaws in the City's computer systems associated with the beginning of a new century in the year 2000 as quickly as possible.

2. Statement of Basis and Purpose in City Record Nov. 17, 2004: This amendment to the rules governing the Division of Labor Servicrs ("DLS") increases the minimum supply and service contract amount under which the submission of an Employment Report to DLS is required. This amendment raises the current $50,000 threshold amount to an amount that corresponds to the small purchase limit established by rule of the Procurement Policy Board. The amendment also exempts contractors who employ fewer than 50 employees from the requirement to submit an Employment Report. The current exemption is limited to contractors who employ fewer than 25 employees. Adjustments to the minimum threshold for DLS review of supply and service contracts that correspond to the small purchase limit are consistent with objectives of the procurement process to reduce administrative requirements for purchases below a limit established by the Procurement Policy Board and the City Council. After public hearing and pursuant to comments raised by the New York City Law Department, revisions to the proposed amendments to the rule were made. First, the amendments increase the exemption threshold for construction contracts from $50,000 to $1 million in §§10-03 and 10-04 of the rule in order to conform the thresholds set forth in these sections to the existing threshold for construction contracts set forth in §10-14. In addition, an outdated reference to Charter §342(b) has been replaced by the correct citation. Also, the amendment regarding required contract language was revised to reflect that the contract language set forth in the rule is required in all contracts in excess of the small purchase limit established by rule of the Procurement Policy Board. Finally, the rule's reference to a board of responsibility convened pursuant to the rules and regulations of the Board of Estimate in the rule was omitted because the Board of Estimate no longer exists.

Rules of the City of New York

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

66 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-04 Responsibilities of Contracting Agencies.

(a) **Contract language-all contracts.** Each contracting agency shall incorporate into every contract in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party the following language:

"This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

(1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

(2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder;

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14) the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("Division"). Copies of all required reports are available upon request from the contracting agency; and

(6) will permit the Division to have access to all relevant books, records and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the contractor;

(ii) suspension or termination of the contract;

(iii) declaring the contractor in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder."

(b) **Special provisions for construction contracts.** In addition to the contractual provisions required in §l0-04(a), each contracting agency shall incorporate into every contract for a construction project in excess of $125,000 to which it becomes a party the following language:

"The contractor further agrees that it shall employ trainees for training level jobs and it shall participate in on-the-job training programs other than apprenticeship programs which are approved by the Division and where required by law, the U.S. Department of Labor, Bureau of Apprenticeship Training or the New York State Department

of Labor.

The contractor shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees of each trade on each construction project; provided, that the trainee requirement shall not apply to contracts in the amount of $125,000 or less.

"Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by the Division and, where required by law, the New York State Department of Labor and the United States Department of Labor, Bureau of Apprenticeship and Training.

The contractor shall be considered to employ 4 journey-level employees in a particular trade when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours 4 full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, 35 hours, etc. For example, in a craft where there is a forty-hour work week, the employment of 4 journey-level employees results in 160 hours of employment (4 × 40). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal 4 journey-level employees, i.e., 3 journey-level employees who work 53 1/3 hours (3 × 53 1/3 = 160).

The training requirement shall not apply to any trade in which the employment of four or more journey-level employees and the trainee shall be for less than 4 consecutive weeks; provided, that 4 weeks shall mean 4 weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, i.e., 160 hours (4 weeks × 40 hours), 150 hours (4 weeks × 37 1/2 hours), 140 hours (4 weeks × 35 hours), etc.

The contractor shall attempt to provide continuous employment for trainees after the completion of the contract to enable them to complete their course of training.

Union contractors shall refer, recommend and sponsor for union membership any of their trainees who can perform the duties of a qualified journey-level employee or who have satisfactorily completed the training program. Such former trainee shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after such referral, recommendation or sponsorship, and the contractor shall attempt to continue the employment of such persons.

In the event of a failure to provide training to the required number of trainees for the required number of weeks, the contractor's compensation shall be decreased by an amount equal to the difference between the wages and fringe benefits paid by the contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the number and duration of the positions been as required unless the contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. The wages and fringes deducted will be whatever a first term trainee would have received under the prevailing wage schedule in effect at the time the trainees should have been employed.

A good faith effort includes at least:

(i) documented efforts to secure trainees from approved training programs; and

(ii) documented outreach efforts to New York State Employment Service, Department of Employment, TAP Centers, community and civil rights groups to identify candidates for training positions and sponsorship of those persons by the contractor for entrance into an approved training program; and

(iii) written notification to the Division that the contractor has been unable to secure trainees pursuant to paragraphs (1) and (2) above and requesting the Division's assistance in securing trainees; provided, that neither the provisions of any collective bargaining agreement nor the refusal by a union with whom the contractor has a collective

bargaining agreement to recognize the validity of the training program shall excuse the contractor's obligation to provide training pursuant to E.O. 50 (§10-14) and these reg- ulations.

To demonstrate its good faith effort, the contractor may at its option supply documentation concerning its employment of trainees on all its construction sites, both City and non-City funded. The Division will review this documentation as part of its analysis to determine whether the contractor made a good faith effort.

The contractor will also include the training provisions of this section in every subcontract in excess of $125,000 to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any subcontract as the Division may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The contractor further agrees that it will assist and cooperate with the Division in obtaining the compliance of subcontractors with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, and it will furnish the Division with information necessary for supervision of such compliance."

(c) **Special provisions for city-assisted contracts.** (Reserved).

(d) **Preaward compliance generally.** (1) No contracting agency shall enter into a construction contract in excess of $1 million, or a supply and service contract in excess of the small purchase limit established by rule of the Procurement Policy Board for procurement for goods and services when the contractor employs 50 or more employees, unless the contractor's Employment Report is first submitted to the Division for its review and approval.

(2) The contracting agency, at the time a proposed covered contractor is identified, either through low bid or negotiation, shall notify the Division in writing of the name of the proposed contractor, the contract in question and dollar amount.

(3) The contracting agency shall transmit a completed Employment Report to the Division within ten business days after the identification of a proposed covered contractor.

(4) The contracting agency may thereafter award a contract, unless the Division gives prior written notice to the contracting agency and the contractor as follows:

(i) If the Division notifies the contracting agency and the contractor within five business days after the receipt by the Division of the Employment Report that the contractor has failed to submit a complete report, the Director may require the contracting agency to disapprove the contractor unless such deficiency is corrected in a timely manner; and

(ii) If the Division notifies the contracting agency and the contractor within fifteen business days of the receipt by the Division of the completed Employment Report that the Division's analysis of the contractor's workforce indicates underutilization and therefore the Division has reason to believe that the contractor is not in substantial compliance with applicable legal requirements and the provisions of E.O. 50 (§10-14) and these regulations, the Division shall promptly take such action as may be necessary to remedy the contractor's noncompliance. These time limits shall apply to the review of all Employment Reports submitted by subcontractors or contractors who are a party to a requirements contract or an open market purchase agreement.

(iii) The time limits for this subdivision (d) begin to run on the business day following receipt of the Employment Report.

(5) The contracting agency shall notify the Division in writing of the award of a covered contract.

(6) With respect to covered supply and service contracts, the contracting agency shall also:

(i) notify the Division upon the submission of the prime contractor's Employment Report of any subcontracts in

excess of the small purchase limit established by rule of the Procurement Policy Board for procurements for goods and services where the subcontractor employs 50 or more employees; and

(ii) transmit the subcontractor's completed Employment Report to the Division for review and approval.

(7) With respect to covered construction contracts, the contracting agency shall in addition:

(i) notify the Division in writing of its commencement to work order;

(ii) notify the Division in writing of the contractor's application for approval of subcontractors and transmit to the Division the subcontractors' completed Employment Reports for review and approval before allowing the contractor to subcontract any work; and

(iii) notify the Division in writing when the contract is 98 percent complete.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-04.

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Subd. (a) amended City Record Nov. 17, 2004 §6, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

Subd. (d) par (1) amended City Record Nov. 17, 2004 §7, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

Subd. (d) par (6) subpar (i) amended City Record Nov. 17, 2004 §8, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

Rules of the City of New York

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

66 RCNY 10-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-05 Responsibilities of the Division of Labor Services.

(a) **Division review-generally.** (1) It shall be the responsibility of the Division to implement, monitor compliance with, and enforce E.O. 50 (§10-14), these regulations and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity.

(2) The Division shall conduct a preaward compliance review to determine whether the contractor maintains nondiscriminatory hiring and employment practices and is taking steps to insure that applicants are employed and that employees are placed, trained, upgraded, promoted, paid, and otherwise treated during employment without regard to race, creed, color, sex, national origin, age, handicap, marital status, sexual orientation or citizenship status.

(3) The Division's preaward compliance review shall proceed in the following manner:

(i) The Division shall analyze the contractor's Employment Report, with special attention directed to the composition of the work force and the contractor's employment policies, practices and procedures, including the following: recruitment, outreach, interviewing practices, pre-employment physical exams, employee evaluations, supervisor accountability, EEO training, promotional and transfer practices, training programs, employee counseling, job descriptions, architectural and other barriers, salaries and wage plans, fringe benefits, work environment, changing facilities, and collective bargaining agreements;

(ii) If the Division deems it appropriate as part of its compliance review, or if the Office finds that the material submitted is incomplete or raises questions concerning the contractor's efforts to meet the requirements of E.O. 50 (§10-14) and these regulations, the Division may:

(A) hold a conference with the contractor to gain information necessary to complete the compliance review and, where necessary, to develop an Employment Program; and

(B) perform an on site review of those matters which were not fully or satisfactorily addressed in the Employment Report or at the conference.

(iii) The Division will take into consideration consent decrees, court and administrative orders and conciliation agreements when analyzing a contractor's compliance with E.O. 50 (§10-14) and these regulations. The Division will not impose requirements which are inconsistent with the foregoing.

(b) **Division review- supply and services contracts.** (1) After the Division has completed its preaward compliance review and has determined that a proposed covered contractor is in compliance with the requirements of E.O. 50 (§10-14) and these regulations, it shall issue a certificate of compliance which shall be valid for 12 months.

(2) After the Division has completed its preaward compliance review and has identified underutilization or employment policies and practices which mitigate against equal employment opportunity, it may negotiate an Employment Program or approve the proposed covered contractor with reservations and monitor the compliance of the contractor with E.O. 50 (§10-14) and these regulations during the term of the contract. The monitoring shall consist of:

(i) an analysis of Employment Update Reports which the contractor is required to submit on a periodic basis; and

(ii) where necessary, conferences and on site reviews.

(c) **Division review- construction contracts.** (1) During the preaward compliance review, the Division shall hold a preaward conference for contracts in excess of $1,000,000. At the conference, the Division will review the contents of the Employment Report in detail with the contractor to insure compliance with applicable Federal, State, and City equal employment opportunity and training requirements.

(2) During the term of the contract, the Division shall monitor the compliance of the contractor with the requirements of E.O. 50 (§10-14) and these regulations. The monitoring shall consist of:

(i) an analysis of the payroll records or other workforce data tables on City and non-City funded sites which the contractor is required to submit on a periodic basis; and

(ii) field visits to City and non-City funded construction sites of the contractor within the City.

(3) Upon completion of the contract and prior to final payment, the Division shall complete the audit of the contractor's payroll records and any other information submitted concerning compliance with the training requirements of E.O. 50 (§10-14) and these regulations to determine whether the contractor has made a good faith effort to comply with these requirements and whether the contractor's compensation should be reduced for failure to provide the required training. The contractor and the contracting agency shall be given notice if the Division's audit reveals that the contractor failed to provide training for the required number of trainees for the required number of weeks, or that the contractor has acted to circumvent the training requirements. In such case, unless the contractor can demonstrate that it made a good faith effort to provide the training, the contractor's compensation will be reduced. The Division shall evaluate all information submitted by the contractor concerning its good faith effort and consult with the contracting agency before a decision is made as to whether a training violation has occurred. The Division shall notify the contractor and contracting agency of its determination.

(d) **(Reserved).**

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-05.

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-06 Criteria for Compliance-Generally.

The Division shall determine the contractor's compliance status after analysis of the composition of its work force and its employment policies and practices using the criteria enumerated in this section. In the event the analysis reveals that the contractor has not met the requirements of E.O. 50 (§10-14) and these regulations, the Division may with the contractor develop an Employment Program to correct any underutilization or employment policies and practices which mitigate against equal employment-opportunity. The Employment Program shall consist of mandated actions based upon the criteria set forth in this section.

(a) **Equal employment opportunity policy statement.** (1) All covered contractors must have a written equal employment opportunity policy which indicates the chief executive Divisionr's commitment to equal employment opportunity, assigns overall responsibility for implementation and provides for a reporting and monitoring procedure.

(2) The contractor shall disseminate its equal employment opportunity policy internally as follows:

(i) Include the policy in employee and supervisor manuals;

(ii) Publicize the policy and company achievements in equal employment in company newspapers, magazines, annual reports, and other company publications;

(iii) Discuss and explain the policy in training sessions and other meetings with employees, executive, management, and supervisory personnel, indicating individual responsibility for effective implementation;

(iv) Meet with union officials to inform them of the policy, review all contractual provisions to insure they are nondiscriminatory, and bargain with respect to the inclusion of nondiscrimination clauses in all union agreements; and

(v) Post the policy on company bulletin boards.

(3) The contractor shall disseminate its equal employment opportunity policy externally as follows:

(i) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer members of all protected groups for all positions;

(ii) Incorporate the equal employment opportunity policy into all purchase orders, contracts, etc., covered by E.O. 50 (§10-14) and these regulations; and

(iii) Communicate the policy in all solicitations or advertisements for employees placed by or on behalf of the contractor.

(4) An executive of the contractor shall be appointed as director or manager of company equal employment programs with sufficient resources to carry out the responsibility. His or her identity should appear on all internal and external communications on the company's equal employment policy and programs. His or her responsibilities should include:

(i) Developing policy statements, equal employment programs, internal and external communication techniques and programs;

(ii) Assisting in the identification of problem areas;

(iii) Assisting line management in arriving at solutions to problems;

(iv) Designing and implementing audit and reporting systems that will

(A) Measure effectiveness of the contractor's policy and implementing programs including supervisors' and management's adherence to the equal employment opportunity policy;

(B) Indicate need for remedial action;

(C) Determine the degree to which the contractor's equal employment objectives have been met;

(v) Serve as liaison between the contractor and enforcement agencies;

(vi) Serve as liaison between the contractor and minority organizations, women's organizations, advocate organizations for other protected groups and community action groups concerned with equal employment opportunity.

(b) **Workforce analysis and identification of problem areas.** (1) All covered contractors must complete and submit an Employment Report. The Employment Report must contain specific information concerning the composition of the contractor's current and projected workforce.

(2) The Division shall analyze the data on minorities and women submitted by the contractor with respect to all job groups. In determining whether minorities or women are being underutilized in any job group, the Division may consider the following factors:

(i) The minority or female population of the labor area surrounding the facility or the construction site;

(ii) The size of the minority or female unemployed work force in the labor or recruitment area surrounding the facility or the construction site;

(iii) The percentage of the minority or female workforce as compared with the total workforce in the immediate labor area;

(iv) The general availability of minorities or females having requisite skills in the immediate labor area;

(v) The availability of minorities or women having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities or women within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities or females.

(3) In the event the Division's analysis reveals underutilization of minorities or women it shall:

(i) request an explanation of the apparent underutilization; and

(ii) consider the anticipated expansion, contraction and turnover in the workforce before developing with the contractor an Employment Program or determining if it has reasonable cause to believe that the contractor is not in compliance with E.O. 50 (§10-14) and these regulations.

(4) The statistical criteria for evaluating the composition of the contractor's workforce will be the following:

(i) the term "underutilization" means a statistically significant disparity between the employment of members of a racial, ethnic, or sexual group and their availability as determined by the Division's utilization analysis; and

(ii) the term "utilization analysis" will mean an analysis of the contractor's workforce using standard statistical techniques to test a null hypothesis that utilization of a given protected group is within acceptable limits, given its availability.

For the purpose of these regulations, the null hypothesis will be rejected (i.e., underutilization will be assumed) whenever there is reason to believe that the utilization rate is below the availability rate at the 80 percent level of significance.

(c) **Analysis of policies and practices-identification of problem areas.**

The Division shall analyze the following policies, practices and procedures of the contractor to insure that individuals are not discriminated against on the basis of their race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status:

(1) The composition of applicant flow;

(2) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, pre-employment physical exams, inquiries with respect to disabilities, test administration, test validity, referral procedures, final selection process and similar factors;

(3) Transfer and promotion practices;

(4) Wage rates, salaries, fringe benefits and other forms of compensation;

(5) Facilities including architectural and other barriers to the employment of handicapped persons, company sponsored recreation and social events, and special programs such as educational assistance;

(6) Seniority practices and seniority provisions of union contracts;

(7) Apprenticeship programs;

(8) All company training programs, formal and informal;

(9) Working atmosphere; and

(10) Technical phases of compliance, such as notification to labor unions, retention of applications, notification to subcontractors, etc.

(d) **Special provisions concerning compliance.** (1) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations if the contractor hires, employs, trains employees or otherwise discriminates on the basis of employees' creed, sex or national origin in those certain instances where creed, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor's business. The contractor shall have the burden of demonstrating that it has complied with the requirements of this paragraph.

(2) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations with respect to age discrimination where it terminates the employment of any person who is physically unable to perform his or her duties or acts pursuant to a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of E.O. 50 (§10-14) and these regulations. The contractor shall have the burden of demonstrating that it has complied with the requirements of this paragraph.

(3) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer employees without regard to their race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status shall excuse the contractor's obligations under E.O. 50 (§10-14) and these regulations.

(4) A contractor shall not be in violation of E.O. 50 (§10-14) and these regulations if it applies different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority system.

(e) **Establishment of an employment program.** If any of the following items are found by the Division in its analysis and the contractor fails to demonstrate that the item does not have a discriminatory effect, an Employment Program may be developed by the Division and the contractor containing special corrective action:

(1) Underutilization of minorities or women in specific job groups;

(2) Lateral or vertical movement of minority, female, handicapped or older employees occurring at a proportionately lesser rate than that of other employees;

(3) Selection procedures which eliminate a significantly higher percentage of minorities, women, handicapped or older employees as compared to other employees;

(4) Application and related pre-employment forms which do not comply with applicable equal employment standards;

(5) Disparity in the wages, salaries, fringe benefits and other forms of compensation paid to minorities, women, handicapped or older employees as compared to other employees;

(6) Position descriptions which are inaccurate in relation to actual functions and duties performed;

(7) Formal or scored selection procedures not validated as required by applicable equal employment standards;

(8) Tests not validated as required by applicable equal employment standards;

(9) Discriminatory rejection of applicants for employment;

(10) Minorities, women, handicapped, or older employees are excluded from or are not participating in company-sponsored activities or programs;

(11) De facto segregation exists at some of the contractor's facilities;

(12) Architectural barriers to the employment and promotion of handicapped persons;

(13) Seniority provisions which are discriminatory and not bona fide;

(14) Failure by managers, supervisors or employees to support company EEO policy;

(15) Minorities, women, handicapped or older employees are significantly underrepresented in training or career improvement programs;

(16) No formal techniques established for evaluating effectiveness of equal employment opportunity programs;

(17) No formal techniques established for evaluating supervisor adherence to equal employment opportunity programs;

(18) Labor unions and subcontractors not notified of their responsibilities; or

(19) Purchase orders not containing equal employment opportunity clause.

(f) **Contents of an employment program.** An Employment Program is a unique program developed to meet the needs of each contractor. The following illustrate the types of corrective actions which may be implemented in specific circumstances.

(1) To encourage the flow of minority, female and handicapped applicants for employment it may be appropriate to direct:

(i) Outreach to advocate organizations and referral sources for minority, female and handicapped persons;

(ii) Encouragement of employment referrals by minority, female and handicapped employees;

(iii) Inclusion of minorities, women and handicapped employees on the personnel relations staff;

(iv) Participation by minority, female and handicapped employees in career days, job fairs, youth motivation programs, and related activities in their communities;

(v) Recruitment at vocational schools, secondary schools, junior colleges, and colleges with predominantly minority, female or handicapped enrollments; and

(vi) Help-wanted advertising in news media directed at minorities, women and handicapped persons in addition to the usual news media utilized.

(2) To insure that all employees are given equal opportunity for promotion it may be appropriate to direct:

(i) Posting and publicizing promotional opportunities and providing opportunities for self-nomination;

(ii) An inventory of current minority, female, handicapped and older employees made to determine academic, skill and experience levels of individual employees and to establish a skills bank;

(iii) Remedial, job training and work-study programs;

(iv) Formal employee evaluation programs;

(v) Requiring supervisory personnel to submit written justification for denying promotions to apparently qualified minority, female, handicapped or older employees;

(vi) Formal career counseling programs which include attitude development, education aid, job rotation, buddy system and similar programs; and

(vii) Training programs.

(3) To insure that qualified handicapped applicants or employees are not excluded from employment or denied promotional opportunities, it may be appropriate to direct a contractor to make reasonable accommodations to the physical or mental limitations of employees and job applicants. The contractor shall have the burden of proving any claim it may make that directions from the Office under this paragraph (3) would impose an undue hardship in the conduct of the employer's business.

(4) To maintain a discrimination free environment and prevent harassment of employees placed through equal employment efforts it may be appropriate to direct:

(i) special training programs for supervisors;

(ii) evaluation of supervisors' equal employment activities in their performance evaluation; and

(iii) other appropriate measures.

(5) Contractors should maintain adequate employment data with reference to minority status and sexual status, including progression line charts, seniority rosters, applicant flow data, applicant rejection ratios, referrals, placements, promotions and terminations, indicating minority and sex.

HISTORICAL NOTE

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Rules of the City of New York

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

66 RCNY 10-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-07 Noncompliance.

(a) **Division determination- failure to file documents.**

(1) Whenever the Director finds that a covered contractor has failed to file an Employment Report or a complete Employment Report, or has filed an Employment Report with substantial misrepresentations, the Director shall send a notice in writing by certified mail, return receipt requested, to the contractor with a copy to the contracting agency describing:

(i) the noncompliance;

(ii) the corrective action necessary to remedy the noncompliance; and

(iii) a suggested date for a conciliation conference before sanctions will be imposed.

(2) If the contractor fails to take corrective action by filing a complete Employment Report, the Director may make a determination as to the sanctions to be imposed.

(3) The contractor shall have a period of seven business days to remedy the noncompliance and pursue conciliation efforts.

(i) If conciliation is successful, a conciliation agreement shall be signed by the Director and the contractor.

(ii) If conciliation is unsuccessful, the Director may find the contractor to be in noncompliance and direct sanctions to be imposed.

(b) **Division determination-EEO compliance.** (1) Whenever the Director has reasonable cause to believe that a contractor is in noncompliance, the Director shall send a notice promptly and in writing by certified mail, return receipt requested, to the contractor with a copy to the contracting agency, describing:

(i) the noncompliance;

(ii) the corrective actions necessary to remedy the noncompliance; and

(iii) a suggested date for a conciliation conference before sanctions will be imposed.

(2) The contractor shall have seven business days to show cause why it should not be found in noncompliance with E.O. 50 (§10-14), and these regulations.

(3) The Director shall offer the contractor an opportunity to conciliate. The Director shall pursue conciliation efforts for a period of seven business days. At the Director's discretion, the conciliation period may be extended.

(i) If conciliation is successful, a conciliation agreement shall be signed by the Director and the contractor.

(ii) If conciliation is unsuccessful, a complaint shall be served on the contractor and a copy shall be served on the contracting agency and filed with the Division of Administrative Trials and Hearings or the hearing officer designated by the Commissioner.

(4) The hearing shall be held in accordance with the rules of procedure adopted by the Division.

(c) **Report and recommendations.** (1) After the close of the hearing, the hearing officer shall render a report containing findings of fact, conclusions of law, and recommen- dations.

(2) Findings of fact shall be based exclusively upon the evidence of record and on matters officially noticed. Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs; even if such evidence would be inadmissible in a civil trial. The hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(3) The report and recommendations pursuant to this subdivision (c) shall be rendered in writing within ninety days after the conclusion of the hearing, or within ninety days after submission of proposed findings of fact, conclusions of law or briefs, if submitted pursuant to the Division's rules of hearing procedure, unless this period is waived or extended by the hearing officer with the written consent of all parties, or for good cause shown on notice to all parties.

(4) The hearing officer shall cause copies of the report and recommendations to be delivered or mailed to the Director, the parties and the contracting agency head.

(d) **Exceptions to report and recommendations.** Within ten days after receipt of the report and recommendations, any party may submit exceptions to said report or to any recommendation contained therein. These exceptions may be responded to by other parties within seven business days of their receipt by said parties. All exceptions and responses shall be filed with the Director. Service of exceptions and responses shall be made simultaneously on all parties to the proceeding and upon the hearing officer. Requests to the Director for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on all other parties. Requests for extensions must be received no later than three business days before the exceptions are due.

(e) **Record and final determination.** After the expiration of the time for filing exception, the Director shall make a final determination on the basis of the record, which shall be the final Administrative Order. The record shall consist of the record of the enforcement proceeding, the rulings, report and recommendations of the hearing officer and the exceptions filed subsequent to the hearing officer's decision. A copy of the determination of the Director shall be provided to the parties, the hearing officer, the contracting agency, the Corporation Counsel and the Comptroller.

(f) **Sanctions.** (1) The Director shall, based upon the findings of fact and recommendations of the hearing officer and the record as a whole, determine whether the contractor is complying with applicable legal requirements and the provisions of E.O. 50 (§10-14) and these regulations.

(2) If the Director makes a determination of noncompliance, the Director may direct the contracting agency head that the following sanctions be imposed:

(i) disapproval of a proposed contractor;

(ii) suspension or termination of a contract;

(iii) declaring the contractor to be in default; or

(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

(3) The Director shall notify the contracting agency head in writing of the determination made and sanctions to be imposed.

(i) The contracting agency head may file written objection to the sanctions imposed within 5 business days of the issuance of the determination by the Director.

(ii) The contracting agency head must specify in writing his or her reasons for objecting to the sanctions imposed by the Director.

(iii) In the event such objections are filed, the Director and the agency head shall jointly determine the sanctions to be imposed.

(4) The Director of the Division may recommend to the contracting agency head that pursuant to the rules and regulations of the Board of Estimate a board of responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and these regulations to be nonresponsible.

(g) **Complaints.** (1) Any person who believes a violation of E.O. 50 (§10-14) and these regulations has occurred may file a complaint, in writing, signed and dated, with the Office during the term of a contract.

(2) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor committing the alleged violation of E.O. 50 (§10-14) and these regulations, a description of the acts considered to be the violation, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his or her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(3) The Division may refer complaints to the appropriate City, State and Federal agencies for processing rather than processing under E.O. 50 (§10-14) and these regulations. Upon referring complaints to another agency, the Division shall promptly notify the complainant and the contractor of such referral.

(4) A prompt investigation shall be made by the Division.

(5) The contractor involved shall cooperate fully with any investigation. Failure or refusal to furnish information or to cooperate in the investigation is a violation of E.O. 50 (§10-14) and these regulations and may result in the imposition of sanctions.

(6) Upon completion of the investigation, the complaining party and the contractor involved shall be informed of the results of the investigation in writing. If the Director has reasonable cause to believe that the contractor is in noncompliance with E.O. 50 (§10-14) and these regulations, then enforcement proceedings shall be commenced.

(7) It is a violation of E.O. 50 (§10-14) and these regulations for a contractor, subcontractor, or other person to intimidate, threaten, coerce, or discriminate against any individual or business for the purpose of interfering with any right or privilege secured by E.O. 50 (§10-14) and these regulations or because a complaint was filed, or a person testified, assisted or participated in any manner in an investigation, proceeding, or hearing under these regulations.

(8) The identity of the complaining party shall be kept confidential on request only during the conduct of an investigation under these regulations. If such confidentiality hinders the investigation, the complaining party shall be so advised for the purpose of obtaining a waiver of confidentiality. The complaining party shall be further advised that failure to waive confidentiality may result in a determination based upon information already provided.

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Rules of the City of New York

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

66 RCNY 10-08

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-08 Referral to Other Agencies on Suspicion of Violations.

When it has reason to believe that federal, state or local law has been violated, the Division shall notify the appropriate enforcement agency concerning its findings.

HISTORICAL NOTE

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-09 Existing Contracts and Subcontracts.

All contracts and subcontracts in effect prior to April 25, 1980 which are not subsequently modified shall be administered in accordance with the equal employment and training provisions of any prior applicable Executive Orders. Any contract or subcontract modified on or after April 25, 1980 shall be subject to E.O. 50 (§10-14).

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Rules of the City of New York

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

66 RCNY 10-10

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-10 Confidentiality.

To the extent permitted by law and consistent with the proper discharge of the Division's responsibilities under E.O. 50 (§10-14) and these regulations, all information provided by a contractor to the Division shall be confidential.

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Rules of the City of New York

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

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-11 Delegation of Authority by the Director.

The Director is authorized to delegate the authority given to him or her by these regulations. The authority delegated by the Director pursuant to these regulations shall be exercised under his or her supervision.

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Rules of the City of New York

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

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-12 Separability.

If any provision of these regulations or the application thereof is held invalid, the remainder of these regulations and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

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Rules of the City of New York

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

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-13 Effectiveness and Applicability.

The rules contained in this chapter shall become effective 30 days after final publication in the City Record and apply to all contracts, solicitations, invitations for bids, or requests for proposals which were made by the City or an applicant on or after said effective date, and to all negotiated contracts which have not been executed as of said effective date.

HISTORICAL NOTE

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Rules of the City of New York

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

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RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 10 DIVISION OF LABOR SERVICES

SUBCHAPTER A PROMOTION OF EQUAL EMPLOYMENT OPPORTUNITY IN CONTRACTS AWARDED BY THE CITY OF NEW YORK

§10-14 Executive Order No. 50.

(April 25, 1980) By the power vested in me as Mayor of the City of New York, it is hereby ordered:

(a) **Purpose.** It is the purpose of this Order to ensure equal employment opportunity in City contracting.

(b) **Division Continued.** The Division of Labor Services shall continue to serve such purposes and to have such responsibilities as restated by this Order.

(c) **Definitions.** Whenever used in this Executive Order, the following terms shall have the following meanings:

Citizenship status. "Citizenship status" means:

(1) the citizenship of any person, or

(2) the immigration status of any person lawfully resident in the United States who is not a citizen or a national of the United States.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by the City;

Contract. "Contract" means any written agreement, purchase order or instrument whereby the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing:

(1) Unless otherwise required by law, the term "contract" shall include any City grant, loan, guarantee or other City assistance for a construction project.

(2) The term "contract" shall not include:

(i) contracts for financial or other assistance between the City and a government or government agency;

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City, or consisting thereof; or

(iii) employment by the City of its officers and employees which is subject to the equal employment opportunity requirements of applicable law.

Contracting agency. "Contracting agency" means any administration, board, bureau, commission, department, or other governmental agency of the City of New York, or any official thereof, authorized on behalf of the City to provide for, enter into, award, or administer contracts.

Contractor. "Contractor" means a person, including a vendor, who is a party or a proposed party to a contract with a contracting agency, first-level subcontractors of supply and service contractors, and all levels of subcontractors of construction;

Department. "Department" means the Department of Business Services.

Division. "Division" means the Division of Labor Services.

Economically disadvantaged person. "Economically disadvantaged person" means a person who, or a member of a family which, is considered economically disadvantaged under applicable law;

Employment report. "Employment report" means a report filed by a contractor containing information as to the employment practices, policies, programs, employment statistics and collective bargaining agreements, if any, of the contractor in such form as the Office may direct by regulation;

Equal employment opportunity. "Equal employment opportunity" means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment;

Trainee. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program other than apprenticeship programs, approved by the Office and, where required by law, the State Department of Labor and the United States Department of Labor, Office of Apprenticeship and Training;

(d) **Responsibilities of Division.** The responsibilities of the Division shall be as follows:

(1) To implement, monitor compliance with, and enforce this Order and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity;

(2) To implement, monitor compliance with, and enforce on-the-job training requirements on construction projects;

(3) To monitor compliance by contractors with State and Federal prevailing wage requirements where required;

(4) To advise and assist contractors and labor unions with respect to their obligations to provide equal employment opportunity;

(5) To advise and assist persons in the private sector with respect to employment problems;

(6) To establish advisory committees, including representatives of employers, labor unions, community organizations and others concerned with the enforcement of this Order; and

(7) To serve as the City's principal liaison to Federal, State and local contract compliance agencies.

(e) **Contract Provisions.** (1) **Equal employment opportunity.** A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor to ensure equal employment opportunity as the Division may direct, consistent with this Order.

(2) **On-the-job training.** A contracting agency shall include in every contract concerning a construction project to which it becomes a party such provisions requiring the contractor to provide on-the-job training for economically disadvantaged persons as the Division may direct by regulation.

(3) **Subcontractors.** A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor not to discriminate unlawfully in the selection of subcontractors as the Division may direct by regulation.

(f) **Employment reports.** (1) **Submission requirements.** No contracting agency shall enter into a contract with any contractor unless such contractors' employment report is first submitted to the Division for its review. Unless otherwise required by law, an employment report shall not be required for the following:

(i) A construction contract in the amount of less than $1 million; a construction subcontract in the amount of less than $750,000; or a supply and service contract in the amount of the small purchase limit established by rule of the Procurement Policy Board for procurements for goods and services or less or of more than the small purchase limit established by rule of the Procurement Policy Board for such procurements in which the contractor employs fewer than 50 employees at the facility or facilities involved in the contract;

(ii) an emergency contract or other exempt contract except as the Division may direct by regulation; and

(iii) a contract with a contractor who has received a certificate of compliance with the equal employment opportunity requirements of applicable law from the Division within the preceding twenty-four months, or an appropriate agency of the State of New York or of the United States within the preceding twelve months, except as the Division may direct by regulation;

(iv) a contract for a procurement of information technology that is within the small purchase limits established by rule of the procurement Policy Board.

(2) **Division review.** The Division shall review all employment reports to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order. The contracting agency shall transmit the employment report to the Division within ten business days after the selection of a proposed contractor. A contracting agency may thereafter award a contract unless the Division gives

prior written notice to the contracting agency and the contractor as follows:

(i) If the Division notifies the contracting agency and the contractor within five business days after the receipt by the Division of the employment report that the contractor has failed to submit a complete employment report, the Director may require the contracting agency to disapprove the contractor unless such deficiency is corrected in a timely manner;

(ii) If the Division notifies the contracting agency and the contractor within fifteen business days of the receipt by the Division of the completed employment report that the Division has found reason to believe that the contractor is not in substantial compliance with applicable legal requirements and the provisions of this Order, the Division shall promptly take such action as may be necessary to remedy the contractor's noncompliance as provided by this Order.

Provided that a contracting agency may award a requirements contract or an open market purchase agreement prior to review by the Division of the contractor's employment report, but may not make a purchase order against such contract or agreement until it has first transmitted such contractor's employment report to the Division and the Division has completed its review in the manner provided by this section.

(3) **Employment program.** The Division may require a contractor to adopt and adhere to a program designed to ensure equal employment opportunity.

(4) **Periodic reports.** Contractors shall file periodic employment reports after the award of a contract in such form and frequency as the Division may direct by regulation to determine whether such contractors are in compliance with applicable legal requirements and the provisions of this Order.

(g) **Training programs.** The Division shall monitor the recruitment, training and placement of economically disadvantaged persons in on-the-job training programs on construction projects. Contracting agencies shall require contractors to make a good faith effort to achieve the ratio of one trainee to four journey-level employees of each craft on each construction project.

(1) The Division shall determine the number of trainees and hours of training required by each contractor or subcontractor for each construction project.

(2) In the event that a contractor fails to make a good faith effort to train the required number of individuals for the required amount of hours, the Division, after consultation with the contracting agency, shall direct such agency to reduce the contractor's compensation by an amount equal to the amount of wages and fringe benefits which the contractor failed to pay to trainees.

(3) On-the-job training of economically disadvantaged persons shall be required on all construction contracts covered by the submission requirements of this Order.

(h) **Compliance investigations and hearings.** The Division shall conduct such investigations and hold such hearings as may be necessary to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order.

(1) **Voluntary compliance.** The Division shall seek to obtain the voluntary compliance of contractors and labor unions with applicable legal requirements and the provisions of this Order.

(2) **Noncompliance.** Upon receiving a complaint or at its own instance, the Division shall determine whether there is reason to believe a contractor is not in compliance with applicable legal requirements and the provisions of this Order.

(3) **Hearings.** The Division shall hold a hearing on prior written notice to a contractor and the contracting agency

before any adverse determination is made with respect to such contractor's employment practices or imposing any sanction or remedy for noncompliance with applicable legal requirements and the provisions of this Order. The hearing shall be held before a City hearing officer, or such other person designated by the Commissioner, who shall submit a report containing findings of fact and recommendations to the Commissioner. Based on the record as a whole, the Commissioner shall determine whether a contractor has failed to comply with applicable legal requirements or the provisions of this Order and the appropriate sanctions for noncompliance.

(4) **Notices.** The Division shall give prior notice of any hearing and shall provide a copy of any hearing report and determination of the Commissioner under paragraph (c) of this section to the contracting agency, the Corporation Counsel and the Comptroller. The Division shall notify appropriate City, State and Federal agencies of violations of law and may, with the approval of the Corporation Counsel, initiate proceedings in such agencies.

(i) **Sanctions and remedies.** After making a determination that a contractor is not complying with applicable legal requirements and the provisions of this Order, the Commissioner may direct that such sanctions as may be permitted by law or contractual provisions be imposed, including the disapproval; of a proposed contractor, the suspension or termination of a contract and the reduction of a contractor's compensation, except as follows:

(1) Within five business days of the issuance of a determination by the Commissioner under §8(c), a contracting agency head may file with the Commissioner written objections to the sanctions to be imposed. Where such objections have been filed, the Commissioner and the contracting agency head shall jointly determine the appropriate sanctions to be imposed.

(2) In lieu of any of the foregoing sanctions, the Commissioner may require a contractor to adopt and adhere to a program to ensure equal employment opportunity.

(j) **Public agencies.** Any administration, board, bureau, commission, department or other public agency, not subject to this Order, which imposes by rule, regulation or order equal employment opportunity requirements, may, with the consent of the Mayor, delegate such responsibilities to the Division as may be consistent with this Order.

(k) **Confidentiality.** To the extent permitted by law and consistent with the proper discharge of the Division's responsibilities under this Order, all information provided by a contractor to the Division shall be confidential.

(l) **Regulations.** The Division shall promulgate such regulations, subject to the approval of the Mayor, as may be necessary to discharge its responsibilities under this Order, including regulations increasing the dollar amounts and number of employees referred to in this Order. Any regulations of the Division establishing terms and conditions for contractors shall be approved as to form by the Corporation Counsel.

Nothing contained herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. The regulations shall set forth this exemption for religiously-sponsored organizations and provide for the discharge of the Division's responsibilities in a manner consistent with such exemption.

(m) **Annual report.** The Division shall submit an annual report to the Mayor concerning its responsibilities under this Order.

(n) **Separability.** If any provision of this Order or the application thereof is held invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

(o) **Revocation of prior orders.** Executive Orders No. 71 (1968), No. 20 (1970), No. 23 (1970), No. 27 (1970), No. 31 (1971), No. 74 (1973), No. 7 (1974), and No. 80 (1977) are hereby revoked and the first paragraph of Section 2 of Executive Order No. 4 (1978) is hereby deleted. Nothing in this Order shall be deemed to relieve any person of any obligation not inconsistent with this Order assumed or imposed pursuant to an Order superseded by this Order.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 10, §1-14.

Section in original publication July 1, 1991.

Subd. (f) par (1) subpar (i) amended City Record Nov. 17, 2004 §9, eff. Dec. 17, 2004. [See T66 §10-03 Note 2]

DERIVATION

Subd. (f) par (1) subpar (ii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

Subd. (f) par (1) subpar (iii) amended City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

Subd. (f) par (1) subpar (iv) added City Record Oct. 15, 1997 eff. Nov. 14, 1997. [See T66 §10-03 Note 1]

56 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-01 Applicability.

These regulations apply to all construction contracts let by contracting agencies except

(a) those contracts funded in whole or in part by the federal or state government which are subject to different and conflicting small business or other requirements, such as minority business enterprise and woman business enterprise requirements, and

(b) contracts which include a contractor utilization plan for participation of certified minority-owned business enterprises and/or woman-owned business enterprises pursuant to Subchapter C of this Chapter.

HISTORICAL NOTE

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the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-01.

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Rules of the City of New York

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

66 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-02 Definitions.

As used in these regulations, the listed terms are defined as follows:

Agency head. "Agency head" means the commissioner, chair or director of any contracting agency.

Building construction. "Building construction" means work, other than heavy construction, consisting of construction activities normally located in or on buildings including work directly supporting these activities and landscaping around these buildings.

Certification documents. "Certification documents" means documents which must be filed by a business seeking certification as a locally based enterprise ("LBE") including but not limited to: sworn affidavits by an authorized official of the business; financial and management disclosure forms for the business; financial disclosure forms for any employees it claims are economically disadvantaged; economic development area profiles indicating where construction work was performed and the dollar amount of such work; verification of gross receipts by a certified public accountant or a licensed professional accountant; and signed release forms granting the City the right to request financial information from any government agency.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Business Services.

Compliance. "Compliance" means a contractor or subcontractor has acted in accordance with the requirements of Administrative Code, §6-108.1 and these regulations.

Construction business. "Construction business" means a firm that performs heavy or building construction work.

Construction project. "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by a contracting agency.

Contract. "Contract" means any written agreement whereby the City is committed to expend or does expend funds in connection with any construction project, except the term "contract" shall not include:

(1) contracts for financial or other assistance between the City and a government or governmental agency;

(2) contracts, resolutions, indentures, declarations of trust, or the instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the City;

(3) contracts for architectural, engineering or drafting services;

(4) emergency contracts; or

(5) contracts funded by the state or federal government which are subject to small business or other requirements which differ and conflict with the requirements of Administrative Code, §6-108.1 and these regulations.

Contracting agency. "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Contractor. "Contractor" means a person who is a party or a proposed party to a construction contract with a contracting agency.

Department. "Department" means the Department of Business Services.

Division. "Division" means the Division of Economic and Financial Opportunity.

Economic development area. "Economic development area" means those areas of the City designated as eligible for participation in the Community Development Block Grant Program of the United States Department of Housing and Urban Development. See Appendices A and B for a listing of areas and maps of areas which meet this definition.

Economically disadvantaged person. "Economically disadvantaged person" means a person who, at the time of hiring by a locally based enterprise if such hiring occurred not more than three tax years prior to the time of such business' application for certification or at the time of such application is a self-employed owner of such business, is:

(1) a resident in a single person household who receives

(i) wages not in excess of seventy percent of the lower-level "urban family budget" for the City as determined by the United States Department of Labor, Bureau of Labor Statistics (See Appendix C); or

(ii) cash welfare payments under a federal, state or local welfare program; or

(2) a member of a family which

(i) has a family income less than seventy percent of the lower-level "urban family budget" for the City as determined by the United States Department of Labor, Bureau of Labor Statistics (See Appendix C), or

(ii) receives cash welfare payments under a federal, state or local welfare program; or

(3) a Vietnam era veteran as defined by applicable federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(4) a displaced homemaker who has not been in the labor force for five years but has during those years worked in the home providing unpaid services for family members and

(i) was dependent on public assistance or the income of another family member but is no longer supported by that income, or

(ii) is receiving public assistance for dependent children in the home which will soon be terminated.

Gross receipts. "Gross receipts" means the total gross income received by an LBE from any source during the applicable period.

Heavy construction. "Heavy construction" means work, on other than a building superstructure, consisting of construction activities located on or below the earth's surface including excavation, building foundation, construction projects requiring the use of earth moving machinery or equipment (power shovels, bulldozers, scrapers), and any work associated with bridges.

Locally based enterprise or LBE. "Locally based enterprise" or "LBE" means a business which:

(1) At the time of application for certification, has been in the building or heavy construction business and:

(i) has received gross receipts in the last three or fewer tax years averaging $2 million or less on an annual basis; or

(ii) has been in business for less than one tax year and has received gross receipts equal to or less than $2 million; and

(2) in the tax year preceding the date of application has:

(i) earned at least 25 percent of its gross receipts from work performed on construction projects located in economic development areas; or

(ii) employed a work force of which at least 25 percent were economically disadvantaged persons.

Minority business enterprise. "Minority business enterprise" or "MBE" means an enterprise approved pursuant to federal or state law for participation in contracts subject to a minority business enterprise requirement.

Minority business enterprise requirement. "Minority business enterprise requirement" means any provision of federal or state law requiring public contractors to employ subcontractors owned by minorities, women or disadvantaged persons.

Noncompliance. "Noncompliance" means a contractor or subcontractor has failed to act in accordance with Administrative Code, §6-108.1 and these regulations.

Person. "Person" means any natural person, corporation, partnership, sole proprietorship or unincorporated association.

Subcontractor. "Subcontractor" means any person having an agreement or arrangement or proposed agreement or arrangement with a contractor (where the parties do not stand in the relationship of an employer and employee) in which any portion of the contractor's duty to perform work is undertaken or assumed by such person.

Woman business enterprise. "Woman business enterprise" or "WBE" means an enterprise approved pursuant to federal or state law for participation in contracts subject to a woman business enterprise requirement.

Woman business enterprise requirement. "Woman business enterprise requirement" means any provision of federal or state law requiring public contractors to hire subcontractors owned by women.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

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Section in original publication July 1, 1991.

Locally based enterprise on LBE amended City Record Mar. 4, 2004 eff. Apr.

3, 2004. Internal redesignation by the Law Department per Charter §1045(b). [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 4, 2004:

The Division of Economic and Financial Opportunity (DEFO) of the Department of Small Business Services administers the LBE Program. Pursuant to the program, prime contractors for City funded construction projects are required to provide 10% of subcontracting dollars to certified LBEs when work is subcontracted. Companies are certified as LBEs by DEFO pursuant to an application process that includes reviewing the average gross receipts for the prior three tax years for the applicant.

As the gross receipts limitations of the rules have not been increased for a substantial period of time, DEFO determined that the gross receipts limitations for LBE certification be raised. This increase will increase the pool of available certified LBEs by permitting the certification of firms that are financially stable and capable of performing subcontracting work.

Rules of the City of New York

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

66 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-03 Certification of LBE's.

(a) **Application for certification.** (1) A contractor or subcontractor seeking certification as an LBE is responsible for submission of true and accurate certification documents demonstrating that it meets all eligibility criteria. Falsification of any documents submitted in connection with the LBE program may lead to the imposition of civil and criminal penalties as provided by law and contract and disqualification from the LBE program.

(2) A contractor or subcontractor seeking certification as an LBE when no contract is pending shall submit its certification documents directly to the Division.

(3) A contractor seeking certification as an LBE when bidding on a particular contract shall submit its certification documents to the contracting agency with its bid.

(4) A subcontractor which has been proposed as an LBE subcontractor by a contractor bidding on a contract but has not been certified as an LBE shall have its certification documents submitted by the bidder in the sealed envelope to the contracting agency within 10 days after notification of low bid.

(5) A subcontractor which has been proposed as an LBE subcontractor by a contractor subsequent to contract award but has not been certified as an LBE shall have its certification documents submitted by the contractor in a sealed

envelope to the contracting agency within 10 business days from the date that the proposed LBE subcontractor is identified.

(6) The contracting agency shall immediately transmit certification documents it receives to OEFO.

(7) A contractor or subcontractor shall submit such additional information as may be required by OEFO in connection with its certifications as an LBE. Failure to submit such information within 10 business days of the date of a written request may result in the denial or revocation of certification as an LBE.

(8) Consistent with the requirements of Federal, State and City law, neither OEFO nor any contracting agency shall disclose to unauthorized persons confidential business information submitted by contractors and subcontractors.

(b) **Eligibility requirements.** (1) A contractor or subcontractor shall be certified as an LBE upon a determination by OEFO that it has met the eligibility requirements set forth in the Administrative Code, §6-108.1 and these regulations. The initial certification shall be effective for three years and shall expire at the end of such period, except as provided in §§11-03(b)(2) and (b)(9) of this section. An LBE may apply to have certification renewed after this three year period, as set forth in §11-03(b)(4) of this section.

(2) A business which has been in existence for less than one year prior to the date of application for certification and which would otherwise qualify as an LBE except that it does not meet the criteria set forth in §11-02 "Locally based enterprise" (2) of these regulations, may nevertheless be certified as an LBE, provided that such certification shall expire one year after it is granted unless the business meets the criteria set forth in such paragraph within one year of the date of its certification.

(3) An LBE seeking continuance of certification granted according to subdivision (b)(2) of this section must submit certification documents before two months prior to the one year anniversary of such certification. If after this one year period, the business meets all the criteria for LBE eligibility as set forth in §11-02 "Locally based enterprise," certification shall be granted for two more years. This business may apply to have certification renewed after this two year period as set forth in §11-03(b)(4).

(4) An LBE may seek to have its certification renewed for successive one year periods by submitting certification documents before two months prior to the expiration date of its certification demonstrating that it continues to meet the eligibility requirements set forth in Administrative Code, §6-108.1 and these regulations.

(5) Failure to submit certification documents before two months prior to the applicable certification anniversary date, as set forth in §§11-03(b)(3) or (b)(4) of this section, may result in the expiration of the LBE certification on the anniversary date.

(6) If the certification of an LBE expires or if the LBE is determined to be ineligible for re-certification, the LBE may submit another set of certification documents six months after the date its original certification expired or six months after the date it was determined to be ineligible for re-certification.

(7) If an LBE submits certification documents before two months prior to the applicable certification anniversary date, as set forth in §11-03(b)(3) or (b)(4) of this section, and the Division is unable to make a determination before the anniversary date, the LBE will be notified that certification will continue until the Division makes a determination as to the LBE's status. If an LBE submits certification documents within the second month prior to the anniversary date, the Division may not be able to review the documents to determine their completeness and the LBE's certification will expire. If the Division is able to review the documents, it may notify the LBE that its certification will continue beyond the anniversary date. If an LBE submits certification documents within the month prior to the anniversary date, its certification will expire on the anniversary date unless it is re-certified.

(8) A business which was certified as an LBE prior to the effective date of these regulations shall be deemed to

have been certified as an LBE on the date of such certification, provided however that any business which was less than one year old at the time of such certification and did not meet all the criteria of eligibility set forth in §11-03 "Locally based enterprise" of these regulations, shall be deemed to have been certified according to §11-03(b)(2) and such certification shall expire on the one year anniversary of the certification date. Such business may seek continuance of its certification as provided in §11-03(b)(3).

(9) Any LBE which has been certified prior to the effective date of these regulations, for a period longer than specified in §§11-03(b)(1) and (b)(2), must submit certification documents within two months after the effective date of these regulations, unless re-certification has been granted prior to the effective date of these regulations.

(10) It is the intent of these regulations to qualify businesses as LBEs only if the ownership, management and operations of the business are conducted by persons who do not own, manage or operate other similar businesses which would otherwise be ineligible. Any business applying for LBE certification that does not conform to this intent shall be deemed ineligible as an LBE.

(11) An LBE must be an independent business. A business that is a separate entity for tax or corporate purposes shall not necessarily be deemed to be an independent business. In determining whether a business is an independent business, the Division shall consider all relevant factors, including but not limited to the date the business was established, the identity of the principals, the sources of financing and the major shareholders, if any, of the business.

(12) The owner of an LBE must possess the ability to manage the business and to make necessary management and policy decisions. The business must not be subject to any extraordinary formal or informal restrictions which limit the discretion of the owners.

(13) The following types of ownership, control, or circumstances concerning a business seeking certification as an LBE shall render it ineligible for participation in the program:

(i) ownership of the business by a non-LBE construction business;

(ii) whole or partial ownership of the business by a person who is an owner in whole or in part of another construction business when the sum of the gross receipts of these businesses exceeds the limits as provided for in §11-22 "Locally based enterprise" of these regulations;

(iii) whole or partial ownership of a business, formed within three years of application, by a person who is an owner in whole or in part of another construction business not eligible for the program;

(iv) control of the business by another construction business through substantial funding arrangements or;

(v) organization of a firm in existence for less than one year whose officers, directors, principal stockholders, or employees serve as the officers, directors, principal stockholders, or employees, of another construction business and one concern is furnishing, or will furnish the other concern with subcontracts, financial or technical assistance, or other facilities, whether for a fee or otherwise.

(14) If, after submitting certification documents, a business is found to not meet the requirements for LBE certification as set forth in §11-02 "Locally based enterprise" is otherwise ineligible, it may submit other certification documents for certification six months after the date it was declared ineligible.

(15) A joint venture consisting of an LBE and a non-LBE business may participate in the LBE program as a contractor or subcontractor if both joint venturers' contract work is defined clearly. However, only the LBE's share of the contract work shall be credited towards the LBE goal.

(16) An LBE shall notify the Division within 30 days after any change in its ownership or control. In addition,

each LBE shall submit a report to the Division by December 30 of each year describing its present ownership and control. The Division shall review any changes made since an LBE's certification to determine whether it remains eligible as an LBE.

(17) A business certified prior to the effective date of these regulations, whose ownership or control has changed shall notify the Division within 30 days of the effective date of these regulations of such change.

(18) Newly formed businesses and businesses whose ownership or control has changed since the date of issuance of these regulations shall be scrutinized by the Division to determine the reasons for the formation, change in the ownership or control of the business.

(19) Once a business is certified as an LBE, it must satisfactorily complete any contracts it is awarded. If an LBE does not satisfactorily complete a contract, it will be required to participate in and successfully complete a technical assistance program through the Department. If the LBE fails to successfully complete or does not participate in the technical assistance program it will be de-certified as an LBE. An LBE will be given an opportunity to respond to any allegations that it has not performed satisfactorily on a contract or that it has not successfully completed or participated in the technical assistance program pursuant to the procedure in §11-03(c)(8). If an LBE is de-certified, such business may re-apply for certification after six months from the date of de-certification. It must demonstrate at that time that it has improved its work performance.

(c) **Certification responsibilities of the Division.** (1) Division shall have the power to certify, re-certify and de-certify a contractor or a subcontractor as an LBE upon a determination that the contractor or subcontractor has met or failed to meet the eligibility requirements and conditions set forth in Administrative Code §6-108.1 and these regulations.

(2) The determination by the Division as to a contractor's or subcontractor's eligibility for certification as an LBE shall be final.

(3) the Division shall be the central repository for all documentation filed by contractors and subcontractors involving their status as an LBE.

(4) the Division shall maintain and provide to all contracting agencies a list of all certified LBEs. the Division shall maintain and provide to all contracting agencies a list by borough of all contractors and subcontractors who perform work in such borough to qualify as LBEs.

(5) When there is a contract pending award and a contractor has submitted incomplete certification documents, the Division shall notify the contractor either by telephone or letter within five business days of actual receipt of the documents that they are incomplete. The contractor shall have 10 business days from the date of the telephone call or from the date of the letter to complete the certification documents. If the contractor fails to submit the additional information within the time allowed, the contractor shall be so notified by the Division by letter on the next business day following the 10 day response period. Copies of this notification letter shall be sent to the prime contractor and the agency.

(6) If complete certification documents have been submitted by a proposed LBE subcontractor for a particular contract waiting award, the Division within one business day after determining that the documents are complete, shall notify the contracting agency that the contract may be awarded.

(7) The Division shall notify the proposed LBE contractor (and the prime contractor and the contracting agency where applicable) of its certification determination within 15 business days of the receipt of complete certification documents.

(8) If the Division has reason to believe that an LBE is in violation of Administrative Code §6-108.1 or these

regulations, the Division shall provide notice to the LBE by certified mail, return receipt requested, of the alleged violation. Within twenty-five calendar days of the receipt of such notice the LBE may respond to the allegation in writing or request an opportunity to appear before the Commissioner or the Commissioner's designee to respond to the allegation. The Commissioner or the designee, after considering the evidence of the alleged violation and any material submitted by the LBE, shall determine whether the LBE shall be de-certified. The Commissioner or the designee may determine that a contractor or subcontractor who has been de-certified shall be ineligible for certification for a period of up to three years after such de-certification.

(9) If at any time the Division has reason to believe that a contractor or subcontractor has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to its Inspector General for investigation. The Inspector General shall investigate the matter in accordance with applicable rules and procedures, and, where appropriate, refer or report the matter to the Department of Investigation. Falsification of any document by a contractor or subcontractor may lead to the imposition of civil and criminal penalties as provided by law and contract, disqualification from the LBE program and debarment from City contracts.

(10) The Division shall conduct audits of LBEs to verify information provided by them.

(11) The Division shall determine the effectiveness of Administrative Code §6-108.1 by conducting surveys or other studies it deems appropriate.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

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Rules of the City of New York

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

66 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-04 Responsibilities of Contracting Agencies.

(a) **Overall goals.** (1) Each agency head shall, consistent with the requirements of applicable Federal, State and City law, including applicable competitive bidding requirements, seek to ensure that not less than 10 percent of the total dollar amount of all contracts awarded for construction projects during each fiscal year are awarded to LBEs.

(2) Each agency head shall, consistent with the requirements for applicable Federal, State and City law, require that if any portion of a construction contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to LBEs; except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(b) **Contract language.** Each contracting agency shall incorporate into each construction contract subject to these regulations to which it becomes a party the following language: Locally Based Enterprise Program

(1) This contract is subject to the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder. No contract shall be awarded unless and until these requirements have been complied with in their entirety.

(2) Unless specifically waived by the agency head with the approval of the Division, if any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based

enterprise ("LBEs"); except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(3) The prime contractor shall not require performance and payment bonds from LBE subcontractors.

(4) If the contractor has indicated prior to award that no work will be subcontracted, no work shall be subcontracted without the prior approval of the agency head, which shall be granted only if the contractor makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE subcontractors to perform the work.

(5) If the contractor has not identified sufficient LBE subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code §6-108.1, recognizes that achieving the LBE requirement is a condition of its contract, and shall submit documentation demonstrating its good faith efforts to obtain LBEs. After award, the contractor shall begin to solicit LBEs to perform subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.

(6) Failure of the contractor to comply with the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:

(i) reducing a contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;

(ii) declaring the contractor in default;

(iii) where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years."

(c) **Information to bidders.** Each contracting agency shall incorporate into all information provided to bidders on construction contracts subject to these regulations the following language:

"This contract is subject to the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder. No construction contract will be awarded unless and until these requirements have been complied with in their entirety.

Be advised that:

(1) If any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based enterprises ("LBEs"); except, where less than 10 percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

(2) No contractor shall require performance and payment bonds from LBE subcontractors.

(3) No contract shall be awarded unless the contractor first identifies in its bid:

(i) the percentage, dollar amount and type of work to be subcontracted; and

(ii) the percentage, dollar amount and type of work to be subcontracted to LBEs.

(4) Within 10 calendar days after notification of low bid, the apparent low bidder shall submit an "LBE Participation Schedule" to the contracting agency. If such schedule does not identify sufficient LBE subcontractors to meet the requirements of Administrative Code §6-108.1, the apparent low bidder shall submit documentation of its good

faith efforts to meet such requirements.

(i) The "LBE Participation Schedule" shall include:

(A) the name and address of each LBE that will be given a subcontract,

(B) the percentage, dollar amount and type of work to be subcontracted to LBE, and

(C) the dates when the LBE subcontract work will commence and end.

(ii) The following documents shall be attached to the "LBE Participation Schedule":

(A) verification letters from each subcontractor listed in the "LBE Participation Schedule" stating that the LBE will enter into a formal agreement for work,

(B) certification documents of any proposed LBE subcontractor which is not on the LBE certified list, and

(C) copies of the certification letter of any proposed subcontractor which is an LBE.

(iii) Documentation of good faith efforts to achieve the required LBE percentage shall include as appropriate but not be limited to the following:

(A) attendance at pre-bid meetings, when scheduled by the agency, to advise bidders of contract requirements;

(B) advertisement where appropriate in general circulation media, trade association publications, and small business media of the specific subcontracts that would be at least equal to the percentage goal for LBE utilization specified by the contractor;

(C) written notification to associations of small, minority and women contractors soliciting specific subcontracts;

(D) written notification by certified mail to LBE firms that their interest in the contract is solicited for specific work items and their estimated values;

(E) demonstration of efforts made to select portions of the work for performance by LBE firms in order to increase the likelihood of achieving the stated goals;

(F) documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:

(a) The names, addresses and telephone numbers of LBE firms that were contacted,

(b) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed,

(c) Documentation showing that no reasonable price can be obtained from LBE firms,

(d) A statement of why agreements with LBE firms were not reached;

(G) a statement of the reason for rejecting any LBE firm which the contractor deemed to be unqualified; and

(H) documentation of efforts made to assist the LBE firms contacted that needed assistance in obtaining required insurance.

(5) Unless otherwise waived by the agency head with the approval of the Division, failure of a proposed contractor to provide the information required by paragraphs (3) and (4) above may render the bid non-responsive and the contract

may not be awarded to the bidder. If the contractor states that it will subcontract a specific portion of the work, but can demonstrate that despite good faith efforts it cannot achieve its required LBE percentage for subcontracted work until after award of contract, the contract may be awarded subject to a letter of compliance from the contractor stating that it will comply with Administrative Code §6-108.1 and subject to approval by the agency head. If the contractor has not met its required LBE percentage prior to award, the contractor shall demonstrate that a good faith effort has been made subsequent to award to obtain LBEs on each subcontract until it meets the required percentage.

(6) When a bidder indicates prior to award that no work will be subcontracted, no work may be subcontracted without the prior approval of the agency head, which shall be granted only if the contractor in good faith seeks LBE subcontractors at least six weeks prior to the start of work.

(7) The contractor may not substitute or change any LBE which was identified prior to award of the contract without the permission of the agency head. The contractor shall make a written application to the contracting agency head for permission to make such substitution or change, explaining why the contractor needs to change its LBE subcontractor and how the contractor will meet its LBE subcontracting requirement. Copies of such application must be served on the originally identified LBE by certified mail return receipt requested as well as the proposed substitute LBE. The agency head shall determine whether or not to grant the contractor's request for substitution."

(d) **Implementation-general.** (1) Each contracting agency shall seek to reach its overall ten percent LBE goal by vigorously encouraging LBE prime participation and enforcing the ten percent (or less if applicable) LBE subcontracting requirement on all contracts where subcontracting will occur. The contracting agencies shall follow the activities outlined below to implement this requirement.

(2) Each agency head shall designate one experienced contract manager to be its LBE liaison officer whose duties shall include directing, coordinating and overseeing agency staff with regard to implementing the procedures set forth in these regulations on a day-to-day basis. The officer's responsibilities shall include:

(i) Examining projects to determine which invitations to bid are to be designated for the LBE prime contractor outreach procedure set forth in §11-04(e);

(ii) Preparing and forwarding bid notices of potential LBE prime contracts and subcontracts to LBEs;

(iii) Verifying a bidder's LBE Participation Schedule and indicating, in writing, whether the contract can be awarded;

(iv) Aiding contractors to locate potential LBE subcontractors for various contract services;

(v) Assisting LBEs in complying with procedures for bidding on agency contracts;

(vi) Coordinating and overseeing investigations of contractor compliance;

(vii) Preparing and submitting the required status reports to the Division.

(3) Each contracting agency shall utilize the list of certified LBEs provided by the Division to identify potential LBE contractors and subcontractors.

(4) LBE participation shall be determined and applied toward meeting the requirements of Administrative Code §6-108.1 on the basis of work actually performed in the following manner:

(i) the total dollar value of a contract awarded to an LBE contractor shall be applied toward the LBE goal of the contracting agency;

(ii) the total dollar value of a subcontract let to an LBE subcontractor and performed by the LBE subcontractor

shall be applied toward the contractor's LBE requirement and the LBE goal of the contracting agency (work further subcontracted by an LBE subcontractor to a non-LBE subcontractor shall not be so applied); and

(iii) the portion of the total dollar value of a contract with a joint venture of an LBE and non-LBE business eligible under these regulations equal to the percentage of the contract work of the LBE partner in the joint venture shall be applied toward the contractor's LBE requirement and the LBE goal of the contracting agency.

(5) When an LBE contractor or subcontractor is used, it must perform the actual work and may not subcontract the work to another firm without agency approval. Credit may be denied to a prime contractor for an LBE subcontractor's participation where an LBE does none of the actual subcontracted work.

(6) The contracting agency shall transmit to the Division certification documents submitted to it within two business days after their receipt.

(7) If at any time a contracting agency has reason to believe that a contractor or subcontractor has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to both its Inspector General and to the Division. Falsification of any document by a contractor or subcontractor may lead to the imposition of civil and criminal penalties as provided by law and contract, disqualification from the LBE program and debarment.

(8) Each contracting agency shall submit quarterly reports, on or before the fifteenth day of January, April, July and October of each year to the Director describing activities undertaken during the previous quarter toward meeting the requirements of Administrative Code §6-108.1 and these regulations. Quarterly reports of each contracting agency shall contain the following information:

(i) The name and telephone number of the agency's LBE liaison officer;

(ii) A summary report including but not limited to:

(A) the total number of contracts subject to LBE requirements which are registered during the quarter and during the fiscal year to date,

(B) the total value of such contracts,

(C) the total number and dollar value of LBE prime contracts registered,

(D) the total number and dollar value of LBE subcontracts,

(E) the total number and dollar value of contracts registered which are subject to MBE/WBE requirements;

(iii) A list of LBEs receiving prime contracts or subcontracts including:

(A) the nature of their work, and

(B) the number and dollar value of prime contracts and subcontracts committed;

(iv) A list of all contracts registered during the quarter including:

(A) a description of each contract, its budget line and registration date,

(B) the dollar amount of the contract,

(C) whether the contract is subject to an MBE/WBE requirement,

(D) the contractor awarded the contract,

(E) whether the contract was awarded to an LBE or MBE/WBE,

(F) whether any part of the contract was subcontracted, and

(G) if the answer to (F) above, is yes, then:

(a) the subcontractor's name,

(b) the subcontractor's LBE or MBE/WBE status,

(c) a description of each subcontract (i.e., type of work),

(d) the dollar amount of each subcontract, and

(e) waivers that have been granted during the quarter, if any;

(v) The status of any default hearings or other actions the agency is taking with regard to failure of a contractor or LBE to comply with Administrative Code §6-108.1 and these regulations; and

(vi) A list of all prime contractors who have submitted letters of compliance during the quarter.

(e) **Implementation- LBE prime contractor participation.**

(1) Contracting agencies shall identify all possible opportunities for LBE prime contractors. They shall divide projects wherever possible into work suitable for bidding by LBE contractors.

(2) The contracting agency shall, on the basis of contract size, type of work, and LBE technical and capitalization capabilities, identify classes of contracts which are attractive for bidding by LBE prime contractors. The following procedures shall apply when the agency is letting such contracts:

(i) The contracting agency shall notify LBEs in a timely fashion when suitable prime contracts will be bid;

(ii) The contracting agency shall monitor the requests for bid documents and conduct further solicitation for LBE bidders, if LBEs have not requested the documents. The agency shall maintain a log of LBE solicitations;

(iii) The contracting agency shall prepare upon request by the Division an analysis of the number of LBE bidders per project and the number of LBE low bidders.

(3) Whenever possible, the contracting agency shall invite LBEs to bid on open market orders (OMOs).

(4) Whenever a contracting agency seeks bidders for an OMO by mailing bid documents to the potential bidders the agency shall when needed:

(i) telephone any LBEs to which the package has been sent to notify them of such fact; and

(ii) contact LBEs which fail to respond to the request for bids.

(5) Wherever an LBE which has not previously contracted with the agency is the low bidder, the contracting agency shall discuss insurance needs, contract requirements, references, and provide other appropriate assistance to the LBE.

(f) **Implementation- LBE subcontractor participation.** (1) The contracting agency shall design contracts to maximize opportunities for LBE subcontracting.

(2) For each contract it bids, the contracting agency shall determine the percentage of work suitable for subcontracting.

(3) Contract specifications shall identify which items of the contract, if any, are suitable for LBE subcontracting, and the estimated value of each such item.

(4) Contracting agencies shall include in the Information to Bidders and the contract provisions for LBE subcontracting as set forth in §§11-04(b) and (c).

(5) When a contracting agency advertises a contract which contains items suitable for subcontracting, it shall apply the following procedures:

(i) The agency shall prepare a bid notice, to be published in the City Record and sent to LBEs and business development organizations, indicating that the project contains items suitable for subcontracting;

(ii) The agency may telephone LBEs in the appropriate work category to inform them that the bid notice has been sent and to recommend that they purchase or review the plans and specifications;

(iii) The agency shall post, at the location where bid materials are available, all bid notices currently advertised. Such bid notices shall include a list of items suitable for performance by subcontractors and their estimated value;

(iv) The agency shall supply with all bid documents a list of certified LBEs;

(v) Upon request, the agency shall provide LBEs a list of names, addresses and telephone numbers of prime contractors who pick up bid documents for projects containing items suitable for subcontracting;

(vi) The agency shall emphasize the LBE program in its agenda for pre-bid and pre-construction conferences.

(g) **Requirements for contract award.** No construction contract subject to LBE requirements shall be awarded unless and until the following requirements have been complied with in their entirety:

(1) If any portion of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to LBEs, except where less than ten percent of the total dollar amount is subcontracted, such lesser percentage shall be so awarded.

(2) No contractor shall require performance and payment bonds from LBE sub- contractors.

(3) The bidder shall identify in the bid proposal:

(i) the percentage, dollar amount and type of work to be subcontracted; and

(ii) the percentage, dollar amount and type of work to be subcontracted to LBEs.

(4) Within 10 calendar days after notification of low bid, the apparent low bidder shall submit an "LBE Participation Schedule". If such schedule does not identify enough LBE subcontractors to meet the requirements of Administrative Code §6-108.1 the apparent low bidder shall also submit documentation of its good faith efforts to meet such requirements.

(i) The "LBE Participation Schedule" shall include:

(A) the name and address of each LBE that will be given a subcontract,

(B) the percentage, dollar amount and type of work to be subcontracted to the LBE, and

(C) the dates when the LBE subcontract work will commence and end.

(ii) The following documents shall be attached to the "LBE Participation Schedule":

(A) verification letters from each subcontractor listed in the "LBE Participation Schedule" stating that the LBE will enter into a formal agreement for work,

(B) certification documents of any proposed LBE subcontractor which is not on the LBE certified lists, and

(C) copies of the certification letter of any proposed subcontractor which is an LBE.

(iii) Documentation of good faith efforts to achieve the required LBE percentage shall include but not be limited to the following:

(A) attendance at pre-bid meetings, when scheduled by the agency, to advise bidders of contract requirements;

(B) advertisement where appropriate in general circulation media, trade association publications, and small business media for specific subcontracts that would be at least equal to the percentage goal for LBE utilization specified by the contractor;

(C) notification to small, minority and woman contractor associations in writing, for solicitation of specific subcontracts;

(D) written notification by certified mail to LBE firms that their interest in the contract is solicited;

(E) demonstration of efforts made to select portions of the work proposed to be performed by LBE firms in order to increase the likelihood of achieving the stated goals;

(F) documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:

(a) The names, addresses and telephone numbers of LBE firms that were contacted;

(b) A description of the information provided to LBE firms regarding the plans and specifications for portions of the work to be performed;

(c) Documentation that no reasonable price can be obtained from LBE firms;

(d) A statement of why agreements with LBE firms were not reached;

(G) a statement of the reason for rejecting any LBE firm which the contractor deemed to be unqualified; and

(H) documentation of efforts made to assist the LBE firms contacted that needed assistance in obtaining required insurance.

(5) Failure of the apparent low bidder to provide the information required in §§11-04(g)(3) and (g)(4) of this section within the allotted time may render the bid non-responsive and the contract may not be awarded to the bidder, except:

If the contractor states that it will subcontract a specific portion of the work, but can demonstrate that despite good faith efforts it cannot achieve its required LBE percentage for subcontracted work until after award of contract, the contract may be awarded subject to a letter of compliance from the contractor stating that it will comply with Administrative Code §6-108.1 and subject to approval by the agency head.

(6) If the contractor has not met its required LBE percentage prior to award, the contractor shall demonstrate that a

good faith effort has been made subsequent to award to obtain LBEs on each subcontract until it meets the required percentage.

(7) If a contractor submits certification documents for a subcontractor it wishes to use towards its LBE required percentage, the contracting agency may not award the contract until the Division has notified it that such certification documents are complete. After the Division has notified the agency that the proposed subcontractor's certification documents are complete, the contract may be awarded. However, no firm may be counted toward the contractor's LBE obligation unless it has been certified as an LBE. The Division shall notify the prime contractor that the certification documents of its proposed subcontractor are complete and that its certification is pending and is subject to review. It shall inform the prime contractor that if the proposed subcontractor is denied certification, the prime contractor must propose another LBE.

(8) If a contractor states prior to award that it will not subcontract work under the contract, the contractor may not subcontract any work without prior approval by the contracting agency. Such a contractor shall notify the agency at least six weeks prior to the start of work by any subcontractor that subcontracting is proposed. During such six-week period the contractor shall seek LBEs to do the work. No subcontracting by such a contractor shall be approved unless the required percentage of subcontracting work is awarded to an LBE, or unless the agency grants a waiver from such requirement upon a finding that a good faith effort has been made to find an LBE.

(9) The contractor may not substitute or change any LBE which was identified prior to award of the contract without the permission of the agency head. The contractor shall make a written application to the contracting agency head for permission to make such substitution or change, explaining why the contractor needs to change its LBE subcontractor and how the contractor will meet its LBE subcontracting requirement. Copies of such application must be served on the originally identified LBE by certified mail return receipt requested as well as the proposed substitute LBE. The agency head shall determine whether or not to grant the contractor's request for substitution.

(10) If the contractor contends that the LBE requirement cannot be met either before or after contract award and can demonstrate a good faith effort to obtain an LBE, a waiver may be granted by the agency head upon approval by the Division.

(h) **Subcontractor waivers.** (1) Subject to approval by the Division, an agency head may waive the subcontracting requirements of Administrative Code §6-108.1 and these regulations upon a finding that:

(i) there is no identifiable LBE subcontractor reasonably available, willing and qualified to perform subcontracted work, provided that

(A) the contractor has been unable to identify an LBE subcontractor after good faith efforts as set forth in §11-04(g)(4)(iii) and

(B) the contracting agency has been unable to locate an LBE after a search of the LBE list; or

(ii) the contract involves an emergency requiring immediate attention because the public health, safety, or welfare is threatened; or

(iii) for other good cause.

Such finding shall be made in writing, state the reasons therefore, and be submitted to the Division if a waiver is requested.

(2) The Division may direct an agency head to submit further evidence concerning the necessity for a waiver.

(3) Upon the approval of an agency head's waiver decision, the Division shall send written notification of such

waiver to the Vice Chairman of the City Council.

(i) **Verification of contractor compliance.** The contracting agency shall perform the following procedures with regard to auditing contractor compliance:

(1) The LBE liaison officer described in §11-04(d)(2) of these regulations shall distribute to the resident engineer a list of LBE subcontractors that have been identified by the prime contractor for use on the project. The resident engineer shall notify the LBE liaison officer of all subcontractors working on the site.

(2) As the work progresses, the LBE liaison officer shall periodically telephone all LBEs identified by the prime contractor to verify that they are on the site and performing specified LBE work.

(3) Each contracting agency shall conduct on-site reviews of the contractor's compliance with the LBE requirements. Such review may include interviews, visits to the actual construction site, and an inspection of any records relevant to the contractor's performance.

(4) The contractor shall cooperate fully with these reviews. Failure or refusal to furnish information or to cooperate may be deemed a breach of contract and a violation of these regulations which may result in the imposition of sanctions as provided in §11-04(j).

(5) The LBE liaison officer shall audit contractor payments to LBE subcontractors by obtaining payment compliance reports every month from both the contractor and the LBE subcontractor. The agency shall investigate all significant report variances.

(6) The LBE liaison officer shall review total payments of prime contractors to LBE subcontractors to insure that the amount equals the LBE percentage required by the contract. If the sum of LBE subcontractor payments is less than the required amount, the contractor may be found in breach of contract and sanctions may be applied in an amount commensurate with the magnitude of noncompliance.

(7) The LBE liaison officer shall maintain an LBE file for each project whether or not it is subject to LBE requirements. When the contracting agency determines that the program does not apply to a project or any part of it, the reasons for that decision shall be placed in the file.

(8) After review of the contractor's performance, the contracting agency shall make one of the following determinations with respect to the contractor's compliance with the LBE requirements:

(i) the contractor is in compliance; or

(ii) there is reasonable cause to believe that the contractor is in noncompliance.

(9) Whenever a contracting agency has reasonable cause to believe that a contractor is in noncompliance, it shall send a notice promptly by certified mail, return receipt requested, to the contractor describing the noncompliance and requiring the contractor to show cause within five days why it should not be found in noncompliance. If the agency determines that there is noncompliance, it shall offer the contractor a 15-day period from the date of notification of the determination an opportunity to conciliate.

(i) If conciliation is successful, a conciliation agreement shall be signed by the agency and the contractor and filed with the Division.

(ii) If conciliation is not successful, the agency shall determine whether sanctions should be imposed.

(10) The contracting agency shall notify the Division of any determination of noncompliance and the imposition of any sanctions. The Division shall notify all other contracting agencies of the determination and the sanctions imposed.

(j) **Sanctions.** (1) When a contracting agency determines that a prime contractor has failed to comply with the requirements of Administrative Code §6-108.1 or these regulations, the agency may impose any or all of the following sanctions:

(i) Reducing of a contractor's compensation by an amount equal to the dollar value of the LBE required percentage not complied with;

(ii) Declaring the contractor in default.

(2) In addition, where the prime contractor is an LBE, the agency shall refer the matter to the Division for further action including the review of the LBE's continued eligibility for certification.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-04.

Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-05 Complaints.

(a) Any person who believes a violation of Administrative Code §6-108.1 and these regulations has occurred may file a complaint, in writing, signed and dated, with the contracting agency when a contract is involved or, if no specific contract is involved, with OEFO.

(b) A prompt investigation shall be made by the contracting agency's LBE liaison officer if the agency receives the complaint, or by the Division if it receives the complaint.

(c) Any complaint alleging fraud, or other criminal behavior, concerning the requirements of Administrative Code §6-108.1 and these regulations on the part of a contractor or subcontractor shall be referred by the contracting agency or the Division to their respective Inspector Generals.

(d) The contractor or subcontractor involved shall cooperate fully with any investigation. Failure or refusal to furnish information or to cooperate in the investigation is a violation of Administrative Code §6-108.1 and these regulations and may result in the imposition of sanctions as provided in §11-04(j).

(e) Upon completion of the investigation, the complaining party and the contractor or subcontractor involved shall be informed of the results of the investigation in writing. If the contracting agency or the Division has reasonable cause

to believe that the contractor or subcontractor is in noncompliance with Administrative Code §6-108.1 or these regulations, then the procedures set forth in §§11-04(i)(9) and (10) shall be commenced.

(f) No contractor, subcontractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual or business for the purpose of interfering with any right or privilege secured by Administrative Code §6-108.1 and these regulations or because a complaint was filed, or a person testified, assisted or participated in any manner in an investigation, proceeding, or hearing under these regulations.

(g) The identity of the complaining party shall be kept confidential only on request. If such confidentiality hinders the investigation, the complaining party shall be so advised for the purpose of obtaining a waiver of confidentiality. The complaining party shall be further advised that failure to waive confidentiality may result in a determination based upon information already provided.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-05.

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Rules of the City of New York

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

66 RCNY 11-06

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-06 Responsibilities of the Division of Economic and Financial Opportunity.

Implementation.

(a) The Division shall enforce and audit the compliance with and the administration of Administrative Code §6-108.1 and these rules and regulations.

(b) The Division may amend these rules and regulations when necessary to ensure the implementation of Administrative Code §6-108.1.

(c) The Division shall develop such forms and documents as may be necessary for the administration of Administrative Code §6-108.1 and these regulations.

(d) The Division shall adjust as necessary the lower-level "urban family budget" for the City, as most recently defined by the U.S. Department of Labor, Bureau of Labor Statistics by reflecting the variation in the "Urban Wage Earners and Clerical Workers Consumer Price Index."

(e) The Division shall submit on or before April 1 of each year an annual report to the City Council, concerning the administration of the program.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-06.

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Rules of the City of New York

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

66 RCNY 11-07

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER A PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

§11-07 Separability and Applicability.

(a) **Separability.** If any provision of these regulations, or the application thereof is held invalid, the remainder of these rules and regulations, and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

(b) **Contracts covered.** All contracts being advertised on or after the effective date of these regulations must comply therewith.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §1-07.

Section in original publication July 1, 1991.

63 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-21

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-21 Definitions.

As used in these rules, the following terms shall have the following meanings:

Applicant. "Applicant" means a business enterprise which has applied for certification as an MBE and/or WBE.

Audit. "Audit" means an examination of a business enterprise to determine whether the business enterprise is eligible for certification as an MBE and/or WBE, and may include an examination of books, records, physical facilities and interviews of applicants.

Business enterprise. "Business enterprise" means any entity, including a sole proprietorship, partnership or corporation which is authorized to and engages in lawful business transactions in accordance with the laws of New York State.

Certified business. "Certified business" means a business enterprise which has been approved for certification as an MBE or WBE in accordance with the procedures set forth in §11-22 of these rules, subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members as defined in §11-21 of these rules, or women.

Certification letter. "Certification letter" means the letter sent by DSBS to an applicant notifying it of its

certification as an MBE or WBE.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the Commissioner of the New York City Department of Small Business Services or his or her designee or his or her successor in function.

Day. "Day" means a calendar day unless otherwise specified.

Denial or denied. "Denial" or "denied" means a determination by DSBS that a business enterprise is not eligible for certification as an MBE or WBE because it does not meet the criteria for certification.

Division. "Division" means the division of economic and financial opportunity within the department of small business services.

DSBS. "DSBS" means the New York City Department of Small Business Services or its successor in function.

Director. "Director" means the Director of the Minority- and Women-Owned Business Enterprise Program or his or her designee or his or her successor in function.

Geographic Market. "Geographic market of the City" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the State of New Jersey.

Graduate MBE or graduate WBE. "Graduate MBE or "graduate WBE" means an MBE or WBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

Minority group member. "Minority group member" means a United States citizen or permanent resident alien who is, and can demonstrate membership in, one of the following groups:

(1) Black persons having origins in any of the Black African racial groups;

(2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; or

(3) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or the Pacific Islands.

Minority-owned business enterprise or MBE. "Minority-owned business enterprise" or "MBE" means a minority-owned business enterprise that is certified in accordance with §1304 of the charter.

Minority- and women-owned business enterprise certification application or certification application. "Minority- and women-owned business enterprise certification application" or "certification application" means the form that DBS*1 requires an applicant to submit for purposes of applying for certification as an MBE or WBE.

Principal office or place of business. "Principal office or place of business" shall mean where the main office and regular meeting place of the board of directors that manages, conducts, and directs the business is located.

Rejected or rejection. "Rejected" or "rejection" means the refusal by DBS* to certify a business enterprise as an MBE or WBE due to an insufficiency in documentation submitted by the applicant.

Women-owned business enterprise or WBE. "Women-owned business enterprise" or "WBE" means a

woman-owned business enterprise that is certified pursuant to §1304 of the charter.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §1, eff. Oct. 20, 2006.

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-01.

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FOOTNOTES

1

[Footnote 1]: * Should be "DSBS".

64 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-22

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-22 Eligibility Criteria.

The following standards shall be used to determine whether a business enterprise is eligible for certification as an MBE or WBE.

(a) **Nexus.** In order to be eligible for certification as an MBE or WBE, a business enterprise must have a real and substantial business presence in the geographic market for the city of New York. An MBE or WBE which meets one of the following conditions shall be deemed to have a real and substantial business presence in the geographic market for the city of New York:

(1) the business enterprise's principal office or place of business or headquarters is located within the City; or

(2) the business enterprise maintains full-time employees in one or more of the business enterprise's offices within the City to conduct or solicit business in the City the majority of their working time; or

(3) the business enterprise's principal office or place of business or headquarters is located within the geographic market of the City, and

(i) has transacted business more than once in the City within the last three (3) years, or

(ii) has sought to transact business more than once in the City within the last three (3) years; or

(4) twenty-five percent (25%) of the business enterprise's annual gross receipts for the last three (3) years were derived from transacting business in the City; or

(5) the business enterprise's principal office or place of business or headquarters is not located within the geographic market of the City but the business enterprise has demonstrated two or more of the following indicia of a real and substantial presence in the market for the City of New York:

(i) the business enterprise has maintained a bank account or engaged in other banking transactions in the City;

(ii) the business enterprise, or at least one of its owners, possesses a license issued by an agency of the City to do business in the City;

(iii) the business enterprise has transacted or sought to transact business in or with the City more than once in the past three years.

(b) **Ownership.** For the purposes of determining whether an applicant should be certified as an MBE or WBE, or whether such certification should be revoked, the following rules concerning ownership shall be applied:

(1) The equity interest of minority group member(s) or women owners must be proportionate to the contribution of the minority group member(s) or women owners as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;

(2) A sole proprietorship must be owned by a minority group member or woman;

(3) A partnership must demonstrate that minority group members or women have a fifty-one (51%) percent or greater share of the partnership; and

(4) A corporation must have issued at least fifty-one (51%) percent of its issued and authorized voting and all other stock to minority group members or women share- holders.

(c) **Control.** Determinations as to whether minority group members or women control the business enterprise will be made according to the following criteria:

(1) Decisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise. The following will be considered in determining whether the minority group members or women are making such decisions:

(i) whether minority group members or women have experience and technical competence in the business enterprise seeking certification;

(ii) whether minority group members or women demonstrate the working knowledge and ability needed to operate the business enterprise; and

(iii) whether minority group members or women show that they devote time on an ongoing basis to the daily operation of the business enterprise.

(2) Articles of incorporation, corporate by-laws, partnership agreements, business certificates, corporate tax returns, unincorporated business tax returns, partnership tax returns and other agreements, including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit minority group members or women who claim ownership of the business enterprise to make those decisions pertaining to operations of the business enterprise without restrictions.

(3) Minority group members or women must demonstrate control of negotiations, signature authority for payroll,

leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions through production of relevant docu- ments.

(d) **Additional eligibility provisions.** The following provisions apply to all applicants seeking certification as an MBE or WBE:

(1) Documentation may be required to substantiate the claim of membership in a minority group. This documentation may include, but is not limited to, birth certificates, foreign passports, naturalization papers, registration on Native American tribal rolls and nonresident visas;

(2) Where the actual management of the business enterprise is contracted out to individuals other than minority group members or women, minority group members and women must demonstrate that they have the ultimate power to hire and fire these managers, that they exercise this power and make other substantial decisions which reflect control of the business enterprise;

(3) Documentation of one (1) year's business activity shall be required in order to provide sufficient information upon which certification can be reasonably made. The commissioner, in his or her discretion, may permit documentation for a lesser period;

(4) DSBS may grant eligible status to any business enterprise eligible under §11-22 of these rules, and (A) certified as an MBE or WBE by the New York State Department of Economic Development, Division of Minority and Women's Business Development pursuant to Article 15-A of the New York State Executive Law and any rules or regulations promulgated thereunder, or (B) certified as an MBE or WBE by another governmental or other certifying entity whose minority- and women-owned business enterprise certification criteria are determined by the commissioner to be consistent with the certification criteria set forth in these rules. Unless otherwise determined by the commissioner, the maximum period for which any certification granted by DSBS pursuant to this subdivision is valid shall be the period during which the business enterprise is certified as an MBE and/or WBE with the original certifying entity;

(5) Any business enterprise that satisfies the eligibility criteria as set forth in §11-22 of these rules, is presumptively eligible for certification under these rules; provided that the commissioner may decline to certify, or revoke the certification of, any business enterprise on the ground that there is not a firm basis for believing that there is a compelling state interest to justify certification of that business enterprise under these rules.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-02.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 20, 2006 §2, eff. Oct. 20, 2006.

Subd. (d) par (4) amended City Record Sept. 20, 2006 §3, eff. Oct. 20, 2006.

Rules of the City of New York

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

66 RCNY 11-23

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-23 Application Intake and Verification.

(a) Minority- and women-owned business enterprise certification applications may be obtained from, and must be returned to DBS. DBS shall date stamp the date of receipt of a certification application upon receiving it.

(b) An applicant shall submit such information or documentation as may be required by DSBS in connection with its certification as an MBE or WBE. Failure to submit such information or documentation may result in the rejection or revocation of such certification.

(c) If a certification application is received by DSBS and required documents are missing, questions are unanswered or the certification application is not properly notarized, DSBS shall send to the applicant, within 45 days of the initial date stamped on the certification application, a notice of status and deficiency (the "Notice"), stating any deficiency arising from missing documents, unfinished questions or deficiencies in notarization. An applicant may cure the noticed deficiency by providing DSBS with documents or information requested in the Notice, within 30 days of the date of the Notice.

(d) When the applicant cures a noticed deficiency, pursuant to procedures set forth in §11-23(c) of these rules, DSBS shall have an additional forty-five (45) days to advise the applicant of any further deficiency which may be cured in accordance with §11-23(c) of these rules.

(e) If the applicant does not cure a noticed deficiency, pursuant to procedures set forth in §11-23(c) of these rules, and the certification application remains incomplete for at least forty-two (42) days of the date of the Notice, unless such time is extended by the director, the applicant shall be sent a notice stating that its certification application has been rejected and will not be processed, together with its rejected certification appli- cation.

(f) An applicant whose certification as an MBE or WBE is rejected, may not reapply for certification for at least one hundred and twenty (120) days of the date of the notice of rejection of its application.

(g) Applicants may be required to consent to inquiries of their bonding companies, banking institutions, credit agencies, contractors, affiliates, clients and other entities to ascertain the applicant's eligibility for certification. Refusal to permit such inquiries shall be grounds for rejection of a certification application.

(h) All applicants and certified businesses shall be subject to an audit at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(i) A certification application may be withdrawn by an applicant without prejudice at any time prior to an audit. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of at least one hundred and twenty (120) days from the date of withdrawal of the application.

(j) All applicants and certified businesses may be required to provide documentation to substantiate that the business has the skill and expertise to perform in the particular area of work for which it is requesting listing or is listed on the M/WBE Directory.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-03.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §4, eff. Oct. 20, 2006.

Subd. (c) amended City Record Sept. 20, 2006 §5, eff. Oct. 20, 2006.

Subd. (d) amended City Record Sept. 20, 2006 §6, eff. Oct. 20, 2006.

Rules of the City of New York

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

66 RCNY 11-24

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-24 Notice of Determination and Right to Appeal.

(a) The director shall provide the applicant with written notice of a determination approving or denying certification.

(b) In the event certification is approved by the director, the applicant will be sent a certification letter and will be certified as an MBE or WBE for five years from the date of the certification letter or until notified of the need to reapply at the director's request, whichever is earlier, so long as the applicant submits to the Division an affidavit of no material change in ownership or control annually.

(c) In the event certification is denied by the director, a written notice of such determination shall be provided to the applicant stating the reason(s) for such denial. Such notice shall also state the procedures for filing an appeal.

(d) The applicant may appeal the determination within thirty (30) days after the date of the notice denying the business enterprise's certification. In the event that a request for an appeal is not made within the thirty (30) day period, the director's determination shall be deemed final and the applicant may not reapply for certification for two (2) years from the date of the written notice denying certification, provided, however, that if the facts and circumstances forming the basis of the denial decision have changed significantly, the applicant, at the discretion of the director, may be granted permission to reapply sooner.

(e) The request for an appeal shall state the grounds upon which the denial of certification is being appealed.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-04.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Sept. 20, 2006 §7, eff. Oct. 20, 2006.

Rules of the City of New York

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

66 RCNY 11-25

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-25 Appeals.

A business entity denied certification or re-certification as an MBE or WBE shall be given written notice by DSBS of the grounds for such denial and an opportunity to appeal such denial in writing to the commissioner. Such appeal or a request for an extension to file an appeal must be received by the commissioner no later than thirty (30) days after the date of the notice denying the business enterprise's certification or re-certification. The commissioner may extend the period in which to initiate an appeal for good cause shown. Such appeal shall include, at a minimum, a description of the reasons why the decision to deny certification or re-certification is in error and provide evidence to support its appeal. Such person shall provide such other documentation or information as is requested by the commissioner, in his or her sole discretion. The commissioner shall render a written determination no later than sixty days after receipt of the appeal, unless the time to render a determination has been extended upon agreement of the commissioner and the business enterprise. If the commissioner's determination is not made within the prescribed sixty days after receipt of the appeal or within the agreed upon extended time period, then the appeal is deemed denied. The decision of the commissioner granting or denying such appeal shall constitute the final agency deter- mination.

HISTORICAL NOTE

Section amended City Record Sept. 20, 2006 §8, eff. Oct. 20, 2006.

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-05. Section in original publication July 1, 1991.

Rules of the City of New York

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

66 RCNY 11-26

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER B MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFICATION PROGRAM

§11-26 Revocation of Minority- or Women-Owned Business Enterprise Status.

(a) A certified business must notify DSBS within forty-five (45) days of any material change in the information contained in the certification application. A material change may include, but is not limited to, a change in any of the following: ownership; address; officers; or services provided by the certified business. If a material change occurs, a review may be conducted by DSBS and certification may be revoked. If an MBE's or WBE's certification is revoked, such business enterprise may reapply for certification at any time following revocation. If a certified business fails to notify the director of such material change, the director may in his or her discretion, revoke the certification of an MBE or WBE for a period of up to five years.

(b) DSBS, upon having reason to believe or upon receiving allegations indicating that a certified business enterprise is not eligible for certification as an MBE or WBE, may meet with minority group members or women claiming ownership and control of the certified business and/or conduct an audit of such business enterprise, and shall take the following actions:

(1) Determine whether the allegation can be substantiated;

(2) Obtain in writing, if possible, the basis of any allegation from the person or persons making the allegation;

(3) Notify a certified business in writing that its certification as an MBE or WBE is under review by the director

and may be revoked. This notice shall specify the bases for such review and any facts specifically at issue; and

(4) Provide the certified business with an opportunity to respond in writing to any allegations set forth in any notices questioning the certification status of a certified business, within twenty-eight (28) days of the date of such notice, by personal service or certified mail, return receipt requested.

(c) If the minority group members or women claiming ownership of the certified business fail to respond timely in writing to the notice of certification status review, or fail to meet with a DBS representative or agree to an audit, the certification of the MBE or WBE may be revoked by the director.

(d) The director shall notify, in writing, a certified business of the revocation of its certification as an MBE or WBE within fourteen (14) days of revoking such certification. The minority group members or women claiming ownership and control of a business enterprise which has had its certification as an MBE or WBE revoked, may request an appeal of this decision within thirty (30) days of the date of the notice of revocation. Such appeal shall be conducted in accordance with procedures set forth in §11-25 of these rules. If a request for an appeal is not made within the thirty (30) day period, the director's determination shall be final and the business enterprise may not reapply for certification for two (2) years from the date of the notice of revocation provided, however, that if the facts and circumstances forming the basis of the revocation decision have changed significantly, the business enterprise may, at the discretion of the director, be granted permission to reapply sooner.

(e) If at any time DSBS has reason to believe that an applicant or certified business has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the Department of Investigation for investigation. Falsification of any document by an applicant or a certified business may lead to the imposition of civil and criminal penalties as provided by law and contract, de-certification as an MBE or WBE and debarment from City contracts.

HISTORICAL NOTE

Section renumbered by Law Department per Charter §1045(b) due to the consolidation of offices into

the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, §2-06.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 20, 2006 §9, eff. Oct. 20, 2006.

Subd. (b) open par amended City Record Sept. 20, 2006 §10, eff. Oct. 20, 2006.

Subd. (e) amended City Record Sept. 20, 2006 §11, eff. Oct. 20, 2006.

Rules of the City of New York

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

66 RCNY 11-60

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-60 Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the person to whom an agency head has delegated authority to organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or persons who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or

proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

(i) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

(ii) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

(iii) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services or his or her designee or his or her successor in function.

(10) "Construction contract" means any agreement with an agency for or in connection with the construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind. Construction contracts shall not include contracts for professional services.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, architectural and engineering services, or construction.

(12) "Contractor" means a person who has been awarded a contract.

(13) "Directory" means a list prepared by the division of firms certified pursuant to §1304 of the charter.

(14) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(15) "EBE" means an emerging business enterprise certified in accordance with §1304 of the charter.

(16) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the state of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

(17) "Goal" means a numerical target.

(18) "Graduate MBE", "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

(19) "Industry classification" means one of the following classifications:

(i) construction;

(ii) professional services;

(iii) standard services; and

(iv) goods.

(20) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.

(21) "MBE" means a minority-owned business enterprise certified in accordance with §1304 of the charter.

(22) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by persons in such a group and the utilization of such firms in city procurement.

(23) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(24) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, design services and construction management services.

(25) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs or EBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit.

(26) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

(27) "Socially and economically disadvantaged" refers to a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business.

(28) "Standard services" means services other than professional services or services procured under a construction contract.

(29) "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.

(30) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities or socially and economically disadvantaged persons, respectively, in one or more industry classifications.

(31) "WBE" means a women-owned business enterprise certified in accordance with §1304 of the charter.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-32. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

70 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-61

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-61 Citywide Goals.

(1) The citywide contracting participation goals for MBEs, WBEs and EBEs shall be as follows:

For construction contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such contracts

Hispanic Americans 9.06% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such contracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For standard services contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9.23% of total annual agency expenditures on such contracts

Hispanic Americans 5.14% of total annual agency expenditures on such contracts

Caucasian females 10.45% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For goods contracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 7.47% of total annual agency expenditures on such contracts

Asian Americans 5.19% of total annual agency expenditures on such contracts

Hispanic Americans 4.99% of total annual agency expenditures on such contracts

Caucasian females 17.87% of total annual agency expenditures on such contracts

Emerging 6% of total annual agency expenditures on such contracts

For construction subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such subcontracts

Asian Americans 9.47% of total annual agency expenditures on such subcontracts

Hispanic Americans 9.06% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such subcontracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

(2) Agencies shall develop agency utilization plans pursuant to §11-64 of this subchapter. Agencies shall seek to ensure substantial progress toward the attainment of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in §11-66 of this subchapter, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals.

(4)(A) Beginning January 29, 2007 and every two years thereafter, the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals.

(B) Beginning May 23, 2007 and every two years thereafter, the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this section. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-33. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the

Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-62

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-62 Responsibilities of the Division.

(1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBEs and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBEs and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBEs and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBEs and EBEs and other contractors designed to enhance participation of MBEs, WBEs and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBEs and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBEs and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all contracts for which utilization plans are established in accordance with §11-66 of this subchapter and 5% of all contracts awarded to MBEs, WBEs and EBEs to assess compliance with this subchapter. All solicitations for contracts for which utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBEs and EBEs.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

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Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program

established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-63

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-63 Responsibilities of Agency M/WBE Officers.

Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section. The duties of the M/WBE officer shall include, but not be limited to:

(i) creating the agency's utilization plan in accordance with §11-64 of this subchapter; (ii) acting as the agency's liaison with the division;

(iii) acting as a liaison with organizations and/or associations of MBEs, WBEs and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

(iv) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(v) referring MBEs, WBEs and EBEs to technical assistance services available from agencies and other organizations;

(vi) reviewing requests for waivers of target subcontracting percentages and/or modifications of participation goals and contractor utilization plans in accordance with §11-66 of this subchapter;

(vii) working with the division and city chief procurement officer in creating directories of certified MBEs, WBEs and EBEs. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the commissioner and the city chief procurement officer;

(viii) for contracts for which utilization goals have been established pursuant to §11-66 of this subchapter, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

(ix) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; and

(x) providing to the city chief procurement officer information for the reports required in §11-69 of this subchapter and providing any other plans and/or reports required pursuant to this subchapter or requested by the city chief procurement officer.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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Rules of the City of New York

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

66 RCNY 11-64

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-64 Agency Utilization Plans.

(1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which has made procurements in excess of five million dollars during the fiscal year which ended on June 30 of the preceding calendar year shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

(i) the agency's participation goals for MBEs, WBEs and EBEs for the year;

(ii) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to §11-61 of this subchapter;

(iii) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

(iv) methods and relevant activities proposed for achieving the agency's participation goals; and

(v) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan may be amended from time to time, in consultation with the division to reflect

changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

(3) In planning its procurement activities over the course of the fiscal year, each agency subject to this section shall consider how it will achieve the goals set forth in its approved agency utilization plan. This determination should be guided by the agency's knowledge of the market involved in the procurement, and the level of progress it has made during the fiscal year toward meeting its goal for the relevant category of procurement.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

2

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Rules of the City of New York

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

66 RCNY 11-65

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-65 Achieving Agency Participation Goals.

(1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

(i) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

(ii) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organizations.

(iii) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

(iv) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

(v) For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.

(vi) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. The agency shall follow the instructions of the city chief procurement officer in cases where he or she determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts.

(vii) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

(viii) Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

2

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Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-66

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-66 Participation Goals for Construction and Professional Services Contracts.

(1) Prior to issuing the solicitation of bids or proposals for individual construction and professional services contracts, agencies shall establish a target subcontracting percentage for the contract and participation goals for MBEs, WBEs and EBEs. The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to §11-61 of this subchapter. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(i) the scope of work;

(ii) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

(iii) the extent to which the type of work involved in the contract presents subcontracting opportunities for amounts under one million dollars;

(iv) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

(v) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals

(i) for procurements described in §11-74 of this subchapter; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials, a referral to the directories prepared by the division pursuant to §11-62 of this subchapter.

(5) For each contract for which participation goals are established the contractor shall be required to submit with its bid or proposal, a utilization plan indicating the percentage of the work it intends to subcontract, and the percentage of work it intends to award to subcontractors for amounts under one million dollars, and, in cases where the contractor intends to award subcontracts for amounts under one million dollars, a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end. When the utilization plan indicates that the bidder or proposer does not intend to award the target subcontracting percentage, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award waiver pursuant to subdivision 12 of this section.

(6) For each contract for which a utilization plan has been submitted, a material term of the contract shall be that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(7) For each contract for which a utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months, and a written confirmation that the contractor has notified each MBE, WBE or EBE included in such list. For multi-year contracts, the contractor shall submit such a list of persons and written confirmation of notification to the agency annually. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(8) For each contract for which a utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE, WBEs or EBEs. The contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE hired pursuant to such plan, the

work performed by, and the dates and amounts paid to each.

(9) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with §11-72 of this subchapter, unless the contractor has obtained a modification.

(10) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to participation goals for MBEs, WBEs and/or EBEs.

(11) In the event that a contractor with a contract that includes a utilization plan submits a request for a change order the value of which exceeds ten percent of such contract, the agency shall establish participation goals as if for a new contract for the work to be performed pursuant to such change order.

(12) Pre-award waiver. If the level of subcontracting set forth in a utilization plan is less than the target subcontracting percentage, the bidder or proposer shall submit a request to the contracting agency, prior to the deadline for such requests established by the contracting agency as indicated in the invitation to bid or propose, for a full or partial waiver of the targeted subcontracting percentage. Such request shall include documentation to support the bidder's or proposer's capacity to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the targeted subcontracting percentage.

(i) Subject to paragraph (ii) of this subdivision, the contracting agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors which shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract.

The administrative code provides that within thirty days of the registration of a contract, the city chief contracting officer shall notify the council of any such waiver granted with respect to the contract.

(ii) The administrative code provides that the agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the target subcontracting percentage to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The administrative code provides that the city chief procurement officer shall notify the speaker of the council and the division in writing within thirty days of the registration of the contract for a full or partial waiver of a target subcontracting percentage, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council and the division by the agency. Such notification shall include, but not be limited to, the name of contractor, the original target subcontracting percentage, the waiver request, including all documentation, and an explanation for the approval of such request.

(13) Modification of utilization plans. (i) A contractor may request modification of its utilization plan after the award of a contract. Subject to paragraph (ii) of this subdivision, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good

faith efforts to meet the goals set by the agency for the contract. Prior to granting such request, an agency shall consult with the division. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(A) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(B) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

(C) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs and EBEs that their interest in the contract was solicited;

(D) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs or WBEs or EBEs;

(E) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited. Documentation of such meetings shall include the dates, times, and locations of such meetings, meeting announcements and invitations, meeting agendas, documents distributed at such meetings, and attendance lists;

(F) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers. Documentation of such negotiation shall include the names, addresses, and telephone numbers of MBEs, WBEs and/or EBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to the reasons that agreements could not be reached with MBEs, WBEs and/or EBEs to perform the work.

(G) Timely written requests for assistance made by the contractor to the agency M/WBE officer and to the division, as well as documented requests for assistance made by the contractor to organizations that provide assistance in the recruitment and placement of MBEs, WBEs and/or EBEs, including but not limited to, minority and/or women community organizations, minority and/or women contractors' groups; local, state and federal business assistance offices;

(H) Description of how recommendations made by the division, the contracting agency, and other organizations described in subparagraph (G) of this paragraph were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

(I) The contractor rejected bids by MBEs, WBEs and/or EBEs for sound reasons based upon a thorough investigation of their capabilities. The MBE's or WBE's or EBE's political or social affiliations or lack thereof shall not be a legitimate reason for rejecting or not soliciting bids to meet the goals.

(J) The contractor designated portions of the work to be performed by MBEs, WBEs and/or EBEs in order to increase the likelihood that the goals will be met, including but not limited to, breaking out the work under the contract into feasible units to facilitate MBE, WBE and/or EBE participation.

(K) The contractor made efforts to assist interested MBEs, WBEs and/or EBEs in obtaining bonding, lines of credit, or insurance as required by the City or the contractor.

(L) The contractor made efforts to assist interested MBEs, WBEs and/or EBEs in obtaining necessary equipment,

supplies, materials, or related assistance or services.

(ii) The administrative code provides that the agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The administrative code provides that the city chief procurement officer, shall notify the speaker of the council and the division in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council and the division by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

(iii) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(14) Substitution of the MBE, WBE and/or EBE subcontractor whose participation was necessary to achieve a participation goal shall be permitted only with approval of the contracting agency, and only in the following circumstances:

(A) Unavailability after receipt of reasonable notice to proceed;

(B) Poor performance;

(C) Financial incapacity;

(D) Refusal by the subcontractor to honor the bid or proposal price or scope;

(E) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

(F) Failure of the subcontractor to meet insurance, licensing, or bonding requirements;

(G) The subcontractor's withdrawal of its bid or proposal;

(H) Decertification of the subcontractor as an MBE, WBE or EBE;

(I) The contractor becomes aware of information negatively reflecting on the subcontractor's business integrity;

(J) Other circumstances allowed by the agency after consultation with the division.

Where the contractor has established the basis for substitution to the satisfaction of the contract compliance officer, it shall make good faith efforts to substitute with a subcontractor which can be counted toward achievement of the relevant goal. If the contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the compliance plan, the contractor shall obtain approval of the agency M/WBE officer and must make good faith efforts to ensure that MBEs, WBEs and/or EBEs have a reasonable opportunity to bid on the new scope of work.

(15) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to §333 of the charter.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

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FOOTNOTES

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Rules of the City of New York

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

66 RCNY 11-67

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-67 Determining Credit for MBE, WBE and EBE Participation.

(1) An agency's achievement of its annual goals shall be calculated as follows:

(i) The total dollar amount that an agency has paid or is obligated to pay to a prime contractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(ii) The total dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(iii) For requirements contracts, credit may be given for the actual dollar amount paid under the contract.

(iv) Where one or more MBEs, WBEs or EBEs is participating in a qualified joint venture, the dollar amount of the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal.

(v) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

(vi) No credit shall be given for the participation in a contract by any company that has not been certified as an

MBE, WBE or EBE in accordance with §1304 of the charter.

(vii) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the contract.

(viii) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

(ix) The participation of a certified company shall not be credited toward more than one participation goal.

(2) A contractor's achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in subdivision (1) of this section; provided that no credit shall be given to the contractor for the participation of a company that is not certified in accordance with §1304 of the charter before the date that the agency approves the subcontractor.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-34. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-68

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-68 Small Purchases.

(1) Each agency shall, consistent with the participation goals established in §11-61 of this subchapter and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2) Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-42. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

78 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-69

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-69 Compliance Reporting.

(1) The administrative code provides that the city chief procurement officer, in consultation with the division shall prepare and submit semiannual reports to the speaker of the council as described in this section. A preliminary report containing information for the fiscal year in progress shall be submitted to the speaker of the council by April 1, 2007, and annually thereafter, and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October 1, 2007 and annually thereafter. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

(i) the number and total dollar value of contracts awarded, disaggregated by industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) the number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii) for those contracts for which an agency set participation goals in accordance with §11-66 of this subchapter:

A. the number and total dollar amount of such contracts disaggregated by industry classification;

B. the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group and industry classification;

C. the number and total dollar value of subcontracts entered into pursuant to such contracts and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

D. a list of the full or partial waivers of target subcontracting percentages granted for such contracts pursuant to paragraph 12 of §11-66 of this subchapter, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classifications; and

E. a list of the requests for modification of participation requirements for such contracts made pursuant to subdivision 13 of §11-66 of this subchapter and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

(viii) a detailed list of each complaint received pursuant to subdivision 1 of §11-72 of this subchapter which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of §11-72 of this subchapter were invoked and the remedies applied;

(ix) a detailed list of all non-compliance findings made pursuant to subdivision 4 of §11-72 of this subchapter and actions taken in response to such findings;

(x) the number of firms certified or recertified in accordance with §1304 of the charter during the six months immediately preceding such report;

(xi) the number and percentage of contracts audited pursuant to subdivision 10 of §11-62 of this subchapter and a summary of the results of each audit;

(xii) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of §11-62 of this subchapter;

(xiii) a list of all solicitations submitted to the city chief procurement officer pursuant to paragraph vi of subdivision 2 of §11-65 of this subchapter and a summary of the determination made regarding each such submission; and

(xiv) any other information as may be required by the commissioner.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the commissioner, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to §11-61 of this subchapter. The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements of this section, including but not limited to, demonstrating specific efforts made to comply with §11-63 of this subchapter.

(3) The data that provide the basis for the reports required by this section shall be made available electronically to the council at the time the reports are submitted.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-45. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

2

[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-70

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-70 Agency Compliance.

(1) The agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her report as required in §11-69 of this subchapter. The administrative code provides that the commissioner and the city procurement officer shall review each agency's submissions and whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the commissioner and the city chief procurement officer shall act to improve such agency's performance, and may take any of the following actions:

(i) require the agency to submit more frequent reports about its procurement activity; (ii) require the agency to notify the commissioner and the city chief procurement officer, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

(iii) reduce or rescind contract processing authority delegated by the mayor pursuant to §§317 and 318 of the charter; and

(iv) any other action the city chief procurement officer or the commissioner deem appropriate.

(2) Noncompliance. The administrative code provides that whenever the city chief procurement officer or the commissioner finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. It further provides that in the event that the agency fails to remedy its noncompliance after such informal efforts, the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the division or the city chief procurement officer, in accordance with this section, including but not limited to the utilization plan required pursuant to §11-64 of this subchapter, shall be deemed noncompliance.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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Rules of the City of New York

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

66 RCNY 11-71

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-71 Pre-Qualification.

An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-49. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-72

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-72 Enforcement.

(1) Any person who believes that a violation of the requirements of §6-129 of the administrative code of the city of New York or these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. Such complaint shall be signed and dated. The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award. (i) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to §6-129 of the administrative code of the city of New York or these rules, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

(ii) Whenever a contracting agency has determined that a bidder or proposer has violated §6-129 of the administrative code of the city of New York, or these rules, the agency may disqualify such bidder or proposer from

competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration. (i) Whenever an agency believes that a contractor or a subcontractor is not in compliance with §6-129 of the administrative code of the city of New York, these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

(ii) In the event that a contractor has been found to have violated §6-129 of the administrative code of the city of New York, these rules, or any provision of a contract that implements §6-129 of the administrative code of the city of New York or these rules, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

(A) enter an agreement with the contractor allowing the contractor to cure the violation;

(B) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

(C) make a finding that the contractor is in default of the contract;

(D) terminate the contract;

(E) declare the contractor to be in breach of contract;

(F) withhold payment or reimbursement;

(G) determine not to renew the contract;

(H) assess actual and consequential damages;

(I) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

(J) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

(K) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to §6-129 of the administrative code of the city of New York or these rules. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of §6-129 of the administrative code of the city of New York or these rules, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to a contracting agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE

or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

(9) Any complaint alleging fraud, corruption or other criminal behavior on the part of a bidder, proposer, contractor, subcontractor or supplier shall in addition be referred to the department of investigation.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-51, 11-52. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

These rules implement Local Law 12 for 2006, which amended §1304 of the New York City Charter and §6-129 of the New York City Administrative Code. Local Law 12 declares the City's policy to ensure the meaningful participation of emerging business enterprises ("EBE") in city procurement and establishes a certification program for such firms. To be eligible for EBE certification, a business must demonstrate that its owner has been socially and economically disadvantaged. Charter §1304(c) authorizes the Commissioner of the Department of Small Business Services to promulgate rules necessary to implement the purposes of the local law establishing this program. This rulemaking provides, in a new Subchapter E of Chapter 11 of Title 66 of the Rules of the City of New York, for the inclusion of Emerging Business Enterprises in the new program established by Administrative Code §6-129 to promote opportunities for Emerging Business Enterprises and for the certification of businesses as Emerging Business Enterprises.

Rules of the City of New York

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

66 RCNY 11-73

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-73 Procurements by Elected Officials and the Council.

(1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by the speaker of the council.

HISTORICAL NOTE

Section amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-54. Section in original publication July 1, 1991. Renumbered by Law Department per

Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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Rules of the City of New York

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

66 RCNY 11-74

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-74 Applicability.

Agencies shall not be required to apply participation requirements to the following types of contracts:

(i) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subchapter;

(ii) those subject to federal or state law participation requirements for MBEs, WBEs and/or EBEs;

(iii) contracts between agencies;

(iv) procurements made through the United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

(v) emergency procurements pursuant to section three hundred fifteen of the charter; (vi) sole source procurements pursuant to section three hundred twenty-one of the charter;

(vii) small purchases as defined pursuant to section three hundred fourteen of the charter; and

(viii) contracts awarded to not-for-profit organizations.

HISTORICAL NOTE

Section so designated (formerly §11-73(q)) and amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. [See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

DERIVATION

Former §11-55. Section in original publication July 1, 1991. Renumbered by Law Department per Charter §1045(b) and per LL 61/1991, repealed City Record Sept. 20, 2006 §13, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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84 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-75

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER D PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT*2

§11-75 Comptroller.

The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

HISTORICAL NOTE

Section renumbered (formerly §11-74) and amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007.

[See Subchapter D footnote]

Section added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006.

FOOTNOTES

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[Footnote 2]: * Subchapter D amended City Record Feb. 6, 2007 §1, eff. Mar. 8, 2007. Subchapter D added City Record Sept. 20, 2006 §12, eff. Oct. 20, 2006. Note: Statement of Basis and Purpose in City Record Feb. 6, 2007:

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Rules of the City of New York

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

66 RCNY 11-81

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-81 Definitions.

As used in these rules, the following terms shall have the following meanings:

Applicant. "Applicant" means a business enterprise which has applied for certification as an EBE.

Audit. "Audit" means an examination of a business enterprise to determine whether the business enterprise is eligible for certification as an EBE, and may include an examination of books, records, physical facilities and interviews of applicants.

Business enterprise. "Business enterprise" means any entity, including a sole proprietorship, partnership or corporation, which is authorized to and engages in lawful business transactions in accordance with the laws of New York State.

Certified business. "Certified business" means a business enterprise which has been approved for certification as an EBE in accordance with the procedures set forth in §11-82 of these rules, subsequent to verification that the business enterprise is owned, operated, and controlled by socially and economically disadvantaged persons as defined in §11-82 of these rules.

Certification letter. "Certification letter" means the letter sent by DSBS to an applicant notifying it of its

certification as an EBE.

City. "City" means the City of New York.

Commissioner. "Commissioner" means the commissioner of the New York City Department of Small Business Services or his or her designee or his or her successor in function.

Day. "Day" means a calendar day unless otherwise specified.

Denial or denied. "Denial" or "denied" means a determination by DSBS that a business enterprise is not eligible for certification as an EBE because it does not meet the criteria for certification.

Division. "Division" means the division of economic and financial opportunity within the department of small business services.

DSBS. "DSBS" means the New York City Department of Small Business Services or its successor in function.

Director of Certification. "Director of Certification" means the director of the emerging business enterprise certification program or his or her designee or his or her successor in function.

Economically disadvantaged. "Economically disadvantaged" refers to a socially disadvantaged person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

Emerging business enterprise or EBE. "Emerging business enterprise" or "EBE" means a business enterprise that is certified in accordance with §1304 of the charter, in which:

(i) at least fifty-one (51%) percent of the ownership interest is held by United States citizens or permanent resident aliens;

(ii) the ownership interest of such persons is real, substantial and continuing;

(iii) such persons have and exercise the authority to control independently, the day-to-day business decisions of the enterprise; and

(iv) such persons have demonstrated, in accordance with regulations promulgated by the commissioner, that they are socially and economically disadvantaged.

Emerging business enterprise certification application. "Emerging business enterprise certification application" means the form that DSBS requires an applicant to submit for purposes of applying for certification as an EBE.

Geographic Market. "Geographic market" of the city means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

Graduate EBE. "Graduate EBE" means an EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

Immediate family. "Immediate family" means a spouse, domestic partner, unemancipated child (including children of a domestic partner), and if they live with the individual claiming disadvantage, parent or sibling.

Principal office or place of business. "Principal office" or "place of business" shall mean where the main office and

regular meeting place of the board of directors that manages, conducts, and directs the business is located.

Rejected or rejection. "Rejected" or "rejection" means the refusal by DSBS to certify a business enterprise as an EBE due to an insufficiency in documentation submitted by the applicant.

Socially and economically disadvantaged. "Socially and economically disadvantaged" refers to a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. A person's race, national origin, or gender, by itself, does not qualify the person as "socially disadvantaged" and the net worth of persons claiming to be "economically disadvantaged" must be less than one million dollars. In determining such net worth, the department shall exclude the ownership interest in the business enterprise and the equity in the primary personal residence.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

86 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-82

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-82 Eligibility Criteria.

The following standards shall be used to determine whether a business enterprise is eligible for certification as an EBE. (a) **Nexus.** In order to be eligible for certification as an EBE, a business enterprise must have a real and substantial business presence in the geographic market for the city of New York. An EBE which meets one of the following conditions shall be deemed to have a real and substantial business presence in the geographic market for the city of New York:

(1) the business enterprise's principal office or place of business or headquarters is located within the City; or

(2) the business enterprise maintains full-time emloyees in one or more of the business enterprise's offices within the City to conduct or solicit business in the City the majority of their working time; or

(3) the business enterprise's principal office or place of business or headquarters is located within the geographic market of the City, and

(i) has transacted business more than once in the City within the last three (3) years, or

(ii) has sought to transact business more than once in the City within the last three (3) years; or

(4) twenty-five percent (25%) of the business enterprise's annual gross receipts for the last three (3) years were

derived from transacting business in the City; or

(5) the business enterprise's principal office or place of business or headquarters is not located within the geographic market of the City but the business enterprise has demonstrated two or more of the following indicia of a real and substantial presence in the market for the City of New York:

(i) the business enterprise has maintained a bank account or engaged in other banking transactions in the City;

(ii) the business enterprise, or at least one of its owners, possesses a license issued by an agency of the City to do business in the City;

(iii) the business enterprise has transacted or sought to transact business in or with the City more than once in the past three years.

(b) **Ownership.** For the purposes of determining whether an applicant should be certified as an EBE, or whether such certification should be revoked, the following rules concerning ownership shall be applied:

(1) The equity interest of socially and economically disadvantaged persons must be proportionate to the contribution of the socially and economically disadvantaged persons as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;

(2) A sole proprietorship must be owned by a socially and economically disadvantaged person;

(3) A partnership must demonstrate that socially and economically disadvantaged persons have a fifty-one (51%) percent or greater share of the partnership; and

(4) A corporation must have issued at least fifty-one (51%) percent of its issued and authorized voting and all other stock to socially and economically disadvantaged persons.

(c) **Control.** Determinations as to whether socially and economically disadvantaged persons control the business enterprise will be made according to the following criteria: (1) Decisions pertaining to the operations of the business enterprise must be made by socially and economically disadvantaged persons claiming ownership of that business enterprise. The following will be considered in determining whether the socially and economically disadvantaged persons are making such decisions:

(i) whether socially and economically disadvantaged persons have experience and technical competence in the business enterprise seeking certification;

(ii) whether socially and economically disadvantaged persons demonstrate the working knowledge and ability needed to operate the business enterprise; and

(iii) whether socially and economically disadvantaged persons show that they devote time on an ongoing basis to the daily operation of the business enterprise.

(2) Articles of incorporation, corporate by-laws, partnership agreements, business certificates, corporate tax returns, unincorporated business tax returns, partnership tax returns and other agreements, including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit socially and economically disadvantaged persons who claim ownership of the business enterprise to make those decisions pertaining to operations of the business enterprise without restrictions.

(3) Socially and economically disadvantaged persons must demonstrate control of negotiations, signature authority for payroll, leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions through production of relevant documents.

(d) **Additional eligibility provisions.** The following provisions apply to all applicants seeking certification as an EBE:

(1) Where the actual management of the business enterprise is contracted out to individuals other than socially and disadvantaged persons, socially and economically disadvantaged persons must demonstrate that they have the ultimate power to hire and fire these managers, that they exercise this power and make other substantial decisions which reflect control of the business enterprise;

(2) Documentation of one (1) year's business activity shall be required in order to provide sufficient information upon which certification can be reasonably made. The commissioner, in his or her discretion, may permit documentation for a lesser period;

(3) DSBS may grant eligible status to any business enterprise eligible under §11-82 of these rules, and certified as an EBE or disadvantaged business enterprise by another governmental or other certifying entity whose emerging business enterprise or disadvantaged business enterprise certification criteria are determined by the commissioner to be consistent with the certification criteria set forth in these rules. Unless otherwise determined by the commissioner, the maximum period for which any certification granted by DSBS pursuant to this subdivision is valid shall be the period during which the business enterprise is certified as an EBE or disadvantaged business enterprise with the original certifying entity;

(4) Any business enterprise that satisfies the eligibility criteria as set forth in §11-82 of these rules is presumptively eligible for certification under these rules; provided that the commissioner may decline to certify, or revoke the certification of, any business enterprise on the ground that there is not a firm basis for believing that there is a compelling state interest to justify certification of that business enterprise under these rules.

(e) **Evidence of social and economic disadvantage.** (1)(A) Evidence of individual social disadvantage must include the following elements: (i) At least one objective distinguishing feature that has contributed to social disadvantage, such as physical or mental disability, long-term residence in an environment isolated from the mainstream of United States society, or other similar causes not common to individuals who are not socially disadvantaged;

(ii) Personal experiences of substantial and chronic social disadvantage in United States society, not in other countries; and

(iii) Negative impact on entry into or advancement in the business world because of the social disadvantage. DSBS will consider any relevant evidence in assessing this element. In every case, however, DSBS will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(B) **Education.** DSBS will consider such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(C) **Employment.** DSBS will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channeled the individual into nonprofessional or non-business fields.

(D) **Business history.** DSBS will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

(2) Evidence of individual economic disadvantage must include the following elements: (A) Submission of narrative and financial information. (i) Each individual claiming economic disadvantage must describe it in a narrative statement, and must submit personal financial information supporting the assertions contained in the narrative statement.

(ii) An individual claiming economic disadvantage who is married or a member of a domestic partnership must submit separate financial information for his or her spouse or domestic partner, provided that such financial information shall not be required where the individual and the spouse are legally separated.

(B) **DSBS evaluation of diminished capital and credit opportunities.** DSBS will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. DSBS will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that DSBS compares will include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(C) **Transfers within two years.** (1) Except as set forth in §11-82(e)(2)(C)(2), DSBS will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a business enterprise's application for participation in the EBE program or within two years of a participant's annual renewal, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) DSBS will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, DSBS may consider any assets that the individual transferred within such two-year period described by §11-82(e)(2)(C)(1), that DSBS does not consider in evaluating the individual's assets and net worth (e.g., transfers to charities).

(b)* **Net worth.**4 For EBE eligibility, the net worth of an individual claiming disadvantage must be less than one million dollars. In determining such net worth, DSBS will exclude the ownership interest in the applicant and the applicant's equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant). Exclusions for purposes of determining net worth are not exclusions for asset valuation or access to capital and credit purposes. A contingent liability does not reduce an individual's net worth.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

4

[Footnote 4]: * (b) should be (f).

Rules of the City of New York

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

66 RCNY 11-83

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-83 Application Intake and Verification.

(a) Emerging business enterprise certification applications may be obtained from, and must be returned to DSBS. DSBS shall date stamp the date of receipt of a certification application upon receiving it.

(b) An applicant shall submit such information or documentation as may be required by DSBS in connection with its certification as an EBE. Failure to submit such information or documentation may result in the rejection or revocation of such certification.

(c) If a certification application is received by DSBS and required documents are missing, questions are unanswered or the certification application is not properly notarized, DSBS shall send to the applicant, within forty-five (45) days of the initial date stamped on the certification application, a notice of status and deficiency (the "Notice"), stating any deficiency arising from missing documents, unfinished questions or deficiencies in notarization. An applicant may cure the noticed deficiency by providing DSBS with documents or information requested in the Notice, within thirty (30) days of the date of the Notice.

(d) When the applicant cures a noticed deficiency, pursuant to procedures set forth in §11-83(c) of these rules, DSBS has an additional forty-five (45) days to advise the applicant of any further deficiency which may be cured in accordance with §11-83(c) of these rules.

(e) If the applicant does not cure a noticed deficiency, pursuant to procedures set forth in §11-83(c) of these rules, and the certification application remains incomplete for at least forty-five (45) days of the date of the Notice, unless such time is extended by the director of EBE, the applicant shall be sent a notice stating that its certification application has been rejected and will not be processed, together with its rejected certification application.

(f) An applicant whose certification as an EBE is rejected may not reapply for certification for at least one hundred and twenty (120) days of the date of the notice of rejection of its application.

(g) Applicants may be required to consent to inquiries of their bonding companies, banking institutions, credit agencies, contractors, affiliates, clients and other entities to ascertain the applicant's eligibility for certification. Refusal to permit such inquiries shall be grounds for rejection of a certification application.

(h) All applicants and certified businesses shall be subject to an audit at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(i) A certification application may be withdrawn by an applicant without prejudice at any time prior to an audit. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of at least one hundred and twenty (120) days from the date of withdrawal of the application.

(j) All applicants and certified businesses may be required to provide documentation to substantiate that the business has the skill and expertise to perform in the particular area of work for which it is requesting listing or is listed on the EBE Directory.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

Rules of the City of New York

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

66 RCNY 11-84

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-84 Notice of Determination and Right to Appeal.

(a) The director of certification shall provide the applicant with written notice of a determination approving or denying certification.

(b) In the event certification is approved by the director of certification, the applicant will be sent a certification letter and will be certified as an EBE for five (5) years from the date of the certification letter or until notified for the need to reapply at the director of certification's request, whichever is earlier.

(c) In the event certification is denied by the director of EBE, a written notice of such determination shall be provided to the applicant stating the reason(s) for such denial. Such notice shall also state the procedures for filing an appeal.

(d) The applicant may appeal the determination within thirty (30) days after the date of the notice denying the business enterprise's certification. In the event that a request for an appeal is not made within the thirty (30) day period, the director of certification's determination shall be deemed final and the applicant may not reapply for certification for two (2) years from the date of the written notice denying certification, provided, however, that if the facts and circumstances forming the basis of the denial decision have changed significantly, the applicant, at the discretion of the director of certification, may be granted permission to reapply sooner.

(e) The request for an appeal shall state the grounds upon which the denial of certification is being appealed.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

89 of 94 DOCUMENTS

Rules of the City of New York

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

66 RCNY 11-85

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-85 Appeals.

A business entity denied certification or re-certification as an EBE shall be given written notice by DSBS of the grounds for such denial and an opportunity to appeal such denial in writing to the commissioner. Such appeal or a request for an extension to file an appeal, must be received by the commissioner no later than thirty (30) days after the date of the notice denying the business enterprise's certification or re-certification. The commissioner may extend the period in which to initiate an appeal for good cause shown. Such appeal shall include, at a minimum, a description of the reasons why the decision to deny certification or re-certification is in error and provide evidence to support its appeal. Such person shall provide such other documentation or information as is requested by the commissioner, in his or her sole discretion. The commissioner shall render a written determination no later than sixty days after receipt of the appeal, unless the time to render a determination has been extended upon agreement of the commissioner and the business enterprise. If the commissioner's determination is not made within the prescribed sixty days after receipt of the appeal or within the agreed upon extended time period, then the appeal is deemed denied. The decision of the commissioner granting or denying such appeal shall constitute the final agency determination.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

Rules of the City of New York

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

66 RCNY 11-86

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 11 DIVISION OF ECONOMIC AND FINANCIAL OPPORTUNITY

SUBCHAPTER E EMERGING BUSINESS ENTERPRISE CERTIFICATION PROGRAM*3

§11-86 Revocation of Emerging Business Enterprise Status.

(a) A certified business must notify DSBS within forty-five (45) days of any material change in the information contained in the original certification application. A material change may include, but is not limited to, a change in any of the following: ownership; address; officers; or services provided by the certified business. If a material change occurs, a review may be conducted by DSBS and certification may be revoked. If an EBE's certification is revoked, such business enterprise may reapply for certification at any time following revocation. If a certified business fails to notify the director of EBE of such material change, the director of EBE may in his or her discretion, revoke the certification of an EBE for a period of up to five (5) years.

(b) DSBS, upon having reason to believe or upon receiving allegations indicating that a certified business enterprise is not eligible for certification as an EBE, may meet with socially and economically disadvantaged persons claiming ownership and control of the certified business and/or conduct an audit of such business enterprise, and shall take the following actions:

(1) Determine whether the allegation can be substantiated;

(2) Obtain in writing, if possible, the basis of any allegation from the person or persons making the allegation;

(3) Notify a certified business in writing that its certification as an EBE is under review by the director of EBE and

may be revoked. This notice shall specify the bases for such review and any facts specifically at issue; and

(4) Provide the certified business with an opportunity to respond in writing to any allegations set forth in any notices questioning the certification status of a certified business, within thirty (30) days of the date of such notice, by personal service or certified mail, return receipt requested.

(c) If the socially and economically disadvantaged persons claiming ownership of the certified business fail to respond timely in writing to the notice of certification status review, or fail to meet with a DSBS representative or agree to an audit, the certification of the EBE may be revoked by the director of certification.

(d) The director of certification shall notify, in writing, a certified business of the revocation of its certification as an EBE within fourteen (14) days of revoking such certification. The socially and economically disadvantaged persons claiming ownership and control of a business enterprise which has had its certification as an EBE revoked may request an appeal of this decision within thirty (30) days of the date of the notice of revocation. Such appeal shall be conducted in accordance with procedures set forth in §11-84 of these rules. If a request for an appeal is not made within the thirty (30) day period, the director of certification's determination shall be final and the business enterprise may not reapply for certification for two (2) years from the date of the notice of revocation provided, however, that if the facts and circumstances forming the basis of the revocation decision have changed significantly, the business enterprise may, at the discretion of the director of certification, be granted permission to reapply sooner.

(e) If at any time DSBS has reason to believe that an applicant or certified business has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the Department of Investigation for investigation. Falsification of any document by an applicant or a certified business may lead to the imposition of civil and criminal penalties as provided by law and contract, de-certification as an EBE and the inclusion of an advice of caution in the City Vendor Information Exchange System ("VENDEX") database.

HISTORICAL NOTE

Section added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

FOOTNOTES

3

[Footnote 3]: * Subchapter E added City Record Feb. 6, 2007 §2, eff. Mar. 8, 2007. [See Subchapter D footnote]

Rules of the City of New York

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

66 RCNY 11 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX A*1 ECONOMIC DEVELOPMENT AREAS

APPENDIX A*1 ECONOMIC DEVELOPMENT AREAS

The following are eligible Community Development areas:

Manhattan

Inwood-Census Tracts 291, 293, excluding 289, 295, 301, 303, 307

North Washington Heights-Census Tracts 269, 271, 277, 279, 285, excluding 267, 273, 275, 281, 283, 287

South Washington Heights-Census Tracts 239, 241, 243.01, 245, 247, 249, 251, 253, 255, 261, 263, 265

Hamilton Heights-Census Tracts 231.01, 233, 235.01, 237

Polo Gardens-Census Tracts 235.02, 243.02

Harlem River Houses-Census Tracts 231.02, 234 excluding 236

Manhattanville-Census Tracts 213.01, 217.01, 219, 221.01, 223, 225, 227.01, 229

St. Nicholas-Census Tracts 213.02, 217.02, 221.02, 224, 226, 227.02, 228, 230, 232

Harlem River Drive-Census Tracts 210, 212, excluding 214

Morningside Heights-Census Tracts 197.01, 209.01, 211, excluding 199, 201.01, 203, 205, 207.01

West Harlem-Census Tracts 197.02, 201.02, 207.02, 209.02

Millbank-Frawley-Census Tracts 186, 190, 200, 216, 218, 220, 222

Upper West Side-Census Tracts 189, 193, 195, excluding 187, 191

West Side-Census Tracts 183, excluding 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 185

Lincoln Square-Census Tracts 147, 151, excluding 145, 149, 153, 155, 157, 159

Clinton-Census Tracts 115, 117, 121, 127, 129, 133, 135, excluding 139

Chelsea-Census Tracts 83, 89, 99, 103, 111, excluding 81, 87, 91, 93, 97

Midtown-Census Tracts 84, 102, 109, 113, 119, 125, excluding 92, 94, 96, 100, 104, 131

Union-Herald-Census Tracts 56, 58, 76, 95, 101, excluding 52, 54, 74

Gramercy-Census Tracts 68, excluding 44, 48, 50, 60, 64, 66

East Village-Census Tracts 20, 24, 26.01, 26.02, 28, 32, 34, 38, 40, excluding 42

West Village-Census Tracts 53, 69, excluding 51, 55.01, 57, 59, 61, 63, 65, 67, 71, 73, 75, 77, 79

Soho/Noho/Tribeca-Census Tracts 55.02, excluding 33, 47, 49

Battery Park-Census Tracts 21, 39, 317, excluding 13

Lower Manhattan-Census Tracts 7, 9, 31, excluding 15.01, 15.02, 319

Chinatown-Little Italy-Census Tracts 27, 29, 41, 43, 45

Lower East Side-Census Tracts 12, 14.02, 16, 18, 22.01, 22.02, 30.01, 30.02, 36.01, 36.02, excluding 14.01

Two Bridges-Census Tracts 2.01, 2.02, 6, 8, 10.02, 25, excluding 10.01

Yorkville-Census Tracts 154, 156.01, 158.02, excluding 135, 138, 140, 142, 144.01, 144.02, 146.01, 148.01, 148.02, 150.01, 150.02, 152, 158.01, 160.01, 160.02

Lower East Harlem-Census Tracts 156.02, 162, 164, 166, 168, 170, 172.01, 172.02, 174.01, 174.02

Upper East Side-Census Tracts 178, 180, 182, 184, 188, 192, 194, 196, 198, 202, 204, 206, 208

Brooklyn

The following are eligible Community Development areas:

Fort Hamilton-Dyker Beach-Census Tracts 164, excluding 154

Bush Terminal-Census Tract 018

Greenpoint Industrial Area-Census Tracts 465, 581, 483, 577, 579, excluding 455, 473, 589

Brighton Beach-Census Tracts 360.01, 360.02, 362, 366, 610.01, excluding 364, 610.02

Coney Island-Census Tract 325, 328, 330, 342, 348.01, 352, excluding 340

West Brighton-Census Tract 348.02, excluding 350, 354, 356

Sheepshead Bay-Census Tract 590, excluding 570, 572, 576, 578, 580, 586, 592, 594.01, 594.02, 596, 598, 600, 608, 626

Homecrest-Census Tract 582, excluding 370, 374, 388, 390, 392, 394, 396, 414.01, 414.02, 416, 418, 554, 556, 584, 588, 606

Gravesend-Census Tract 582, excluding 370, 374, 388, 390, 392, 394, 396, 414.01, 414.02, 416, 418, 554, 556, 584, 588, 606

Bath Beach-Census Tract 292, excluding 168, 174, 176, 280, 282, 286

Bensonhurst-Census Tracts 178, 276, excluding 170, 172, 180, 182, 184, 186, 188, 190, 256, 258, 260, 262, 264, 266, 268, 270, 274, 278, 284, 288, 290, 294, 296, 298, 300, 302, 304

Dyker Heights-Census Tract 120, excluding 128.01, 132, 140, 144, 146, 148, 150, 156, 158, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212

Sunset Park-Census Tracts 002, 020, 022, 072, 074, 076, 078, 080, 082, 084, 088, 090, 092, 096, 098, 100, 101, 102, 106, 118, 122, 143, 145, 147, excluding 086, 104, 108

Red Hook-Census Tracts 055, 057, 059, 085

Columbia Street-Census Tracts 047, 051

Cobble Hill-Census Tract 049, excluding 045

Carroll Gardens-Census Tracts 075, 077, excluding 063, 065, 067

Gowanus-Census Tracts 069, 070, 117, 121, 123, 125, 127

Boerum Hill-Census Tracts 039, 041, 043

Park Slope-Census Tracts 129.01, 129.02, 131, 133, 135, 137, 139, 141, 149, 151, 159, 167, 173, excluding 153, 155, 157, 165, 169, 171, 502.01, 502.02

Ocean Parkway-Census Tract 486, excluding 460.01, 462.01, 480, 482, 484, 488, 490, 492, 494

Flatbush-Census Tracts 506, 508, 510, 516, 790, 792, 794, 796, 818, 820, 822, 824, 826, 828, excluding 460.02, 512, 514, 518, 520, 522, 524, 526, 528, 754, 766, 770, 772, 774, 786, 788

Starrett City-Census Tract 1058

North Canarsie-Census Tract 974, excluding 962, 968, 970

Farragut-Census Tract 942, excluding 780, 782, 830, 832, 834, 836, 838, 840, 842, 844, 846

Ramsen Village-Census Tract 888, excluding 928, 930, 934

North East Flatbush-Census Tracts 882, 884, 886, 890, 892

Wingate-Census Tract 874.01, 878, excluding 876, 880

Broadway Junction-Census Tracts 365.02, 367, 1138

Rugby-Census Tracts 814, 816, 860, 862, 866, 868, 870, excluding 848, 850, 852, 854, 856, 858, 864, 872, 938, 940

Lefferts Gardens-Census Tracts 327, 329, 800, 802, 804, 806, excluding 798, 810

Crown Heights-Census Tracts 213, 217, 219, 221, 223, 225, 307, 311, 317.02, 319, 321, 323, 325, 331, 333, 337, 339, 343, 347, 349, 351, 353, 355, 357, 359, excluding 335

Weeksville-Census Tracts 309, 345

Brower Park-Census Tracts 313, 315, 317.01, 341

Prospect Heights-Census Tracts 161, 163, 203, 205, 207, 215

Fulton Ferry-Census Tracts 021, 023

Downtown-Census Tracts 011, 025, 027, 033, 035, 037, excluding 013

Fort Greene-Census Tracts 029.01, 179, 181, 183, 185.01, 187, 191, 199, 201, 231, excluding 029.02, 031

Clinton-Census Tract 197, excluding 193, 195

Tompkins Park-Census Tracts 251, 263, 279

Stuyvesant Heights-Census Tracts 271.02, 273, 297

Southern Williamsburg-Census Tracts 237, 239, 507, 509, 529, 531, 533, 535, 537, 539, 545

South Side-Census Tracts 513, 523, 525, 527, 547, 549, 551

North Side-Census Tracts 515, 517, 519, 555, 557

Bedford Stuyvesant-Census Tracts 227, 229, 233, 235, 241, 243, 245, 247, 249, 253, 255, 257, 259.01, 259.02, 261, 265, 267, 269, 271.01, 275, 277, 281, 283, 285.01, 285.02, 287, 289, 291, 293, 295, 299, 381, 383, 385, 387

Greenpoint-Census Tracts 563, 575, excluding 499, 559, 565, 567, 569, 571, 573, 591, 593

Ridgewood-Census Tracts 429, 431, 441, 443, 445, 447

Bushwick-Census Tracts 389, 391, 393, 395, 397, 399, 401, 405, 409, 411, 413, 415, 417, 419, 421, 423, 425, 427, 433, 435, 437, 439, 453, 487

Ocean Hill-Census Tracts 301, 303, 361, 363, 365.01, 369, 371, 373, 375, 377, 379

North Williamsburg-Census Tracts 495, 497, 503, excluding 477, 501

Brownsville-Census Tracts 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 918, 920

East New York-Census Tracts 1114, 1118, 1120, 1122, 1124, 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1148,

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Highland Park-Census Tracts 1142.01, 1146, 1172.01, 1172.02, 1174, excluding 1142.02

City Line-Census Tracts 1188, 1190, 1196, 1200, 1208, 1210, excluding 1186, 1202

Fresh/Spring Creek-Census Tracts 1040, 1070, 1214, excluding 1220

New Lots-Census Tracts 982, 1100, 1102, 1110, 1172, excluding 1078, 1106

Cypress Hill-Census Tracts 1176.01, 1176.02, 1178, 1184, excluding 1182.01, 1182.02

Boro Park-Census Tracts 110, 112, 192, 218, 220, 222, 226, 228, 230, 232, 238, 240, 472, 478, excluding 114, 116, 214, 216, 224, 234, 236, 242, 470, 474, 476

Central Williamsburg-Census Tracts 489, 491, 493, 505, 511

Queens

South Jamaica-Census Tracts 182, 184.01, 184.02, 186, 188, 190, 192, 272, 274, 276, 278, 284, 288, 788, 790, excluding 792

Springfield Gardens North-Census Tracts 330, 768, excluding 292, 334.02

Springfield Gardens South-Census Tracts 766, excluding 304, 320

Hollis-Census Tracts 500, 502.01, 508, excluding 482, 484, 502.02, 510

St. Albans-Census Tracts 334.01, 352, 398, 404, 504, 522, 524, 526, 528, excluding 280, 282, 366, 368, 376, 384, 394, 400, 402, 420, 422, 424, 426, 432, 506, 518, 520, 530, 532

Breezy Point and Roxbury-Census Tracts 916.02, excluding 916.01, 918

Rockaway Park/Seaside-Census Tract 942.01, excluding 938

Hammels-Census Tract 942.02, excluding 942.03

Arverne-Edgemere-Census Tract 952, excluding 962, 964, 972, 992

Far Rockaway-Census Tract 1032, excluding 998, 1010

Broad Channel-Census Tract 1072.01, excluding 1072.02

Forest Hills-Census Tract 725, excluding 645, 707, 709, 711, 713.01, 719, 727, 729, 731, 733, 735, 737, 739, 741, 743, 745, 747, 757, 769.01, 769.02, 771

Ridgewood-Census Tracts 545, 553, 559, 589, excluding 539, 547, 549, 551, 555, 557, 581, 583, 585, 587, 591, 593, 595, 603, 613

Flushing-Census Tracts 867, 871, 875, excluding 797, 845, 851, 853, 855, 865, 889, 907, 1161

Corona-Census Tracts 411, 413, 415, 427, 439, excluding 437, 443, 455

North Corona-Census Tracts 375, 377, 379, 401, 403, 405, 407, 409, excluding 381

East Elmhurst-Census Tracts 353, 361, 365, 369, 373, excluding 355, 363, 367, 371

Jackson Heights-Census Tracts 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 309.02, 327, 329, 337, 339, 347, 351

Maspeth-Census Tracts 535, excluding 205.01, 205.02, 219, 229, 243, 489, 493.01, 493.02, 495, 497, 511, 513, 515, 517, 521, 525, 527, 529, 599, 601, 667

Sunnyside-Census Tracts 179, 197, 235, excluding 169, 171, 181, 183, 185, 187, 189, 191, 253

Hunter's Point-Census Tract 019, excluding 001, 007

Queens Village-Census Tracts 516, 540, excluding 496, 512, 536, 538, 542, 548, 552, 554, 556, 558, 560, 562, 564, 566, 568, 578, 580, 588

Jamaica Hills-Census Tracts 446.02, excluding 448, 450, 452, 454, 456

Briarwood-Census Tracts 236, 238, excluding 214, 220.01, 220.02, 230, 779.05

Richmond Hill-Census Tracts 142.01, 142.02, 152, excluding 024, 026, 028, 098, 108, 110, 118, 120, 122, 124, 126.01, 126.02, 128, 130, 132, 144, 148, 150, 154, 156

South Ozone Park-Census Tracts 158, 174, 178, 180, 814, 818, excluding 094, 096, 100, 102, 104, 106, 164, 166, 168, 170, 172, 176, 838, 840, 846.01, 846.02, 864

Ozone Park-Census Tract 050, excluding 032, 034, 036, 038, 040.01, 040.02, 042, 044.01, 052, 054, 058, 086, 088, 112, 114, 116, 878

Lindenwood-Census Tract 044.02, excluding 062

Jamaica-Census Tracts 194.01, 194.02, 196, 198, 202, 204, 206, 208, 212, 240, 244, 246, 248, 250, 252, 258, 260, 262, 264, 266, 270, 410, 414, 440, 442, 460, excluding 434, 446.01, 462, 468, 470, 480

Woodside-Census Tracts 163, 297, excluding 245, 247, 249, 251, 255, 257, 259, 261, 263, 293, 295, 299

Astoria-Long Island City-Census Tracts 025, 029, 035, 043, 055, 079, 081, 087, 141, 155, 157, 161, excluding 027, 031, 037, 041, 045, 047, 049, 051, 053, 057, 059, 061, 063, 065, 069, 071, 073, 075, 077, 083, 091, 143, 145, 147, 149, 151, 153, 159

Laurelton-Census Tracts 328, 358, excluding 616.01, 618, 620, 624, 626, 630, 632, 646, 650, 682

Bronx

Bathgate-Census Tracts 165, 167, 375.01, 377, 385

Baychester, Historic Village of-Census Tract 302

Bedford Park-Census Tracts 403.01, 403.02, 405, excluding 407.01, 407.02, 411, 413, 415

Belmont-Census Tracts 387, 389, 391, 393, 397

Bronxdale-Census Tracts 336, 338, 340, excluding 324, 328, 330, 332

Bronx River-Census Tracts 062, 064, 066, 214, 054, 056, excluding 058

Castle Hill-Census Tracts 086, 088, excluding 074, 084, 102

Claremont-Census Tracts 145, 147, 169

Concourse Village-Census Tracts 059.02, excluding 061

East Concourse-Census Tracts 173, 175, 177, 179, 181, 183

East Tremont-Census Tracts 359, 361, 363, 365.01, 365.02, 367, 369.01, 369.02, 371, 373, 375.02, 375.03

Fordham-Census Tracts 237.01, 237.02, 239, 383, 399.01, 399.02, 401

Highbridge-Census Tracts 189, 193, 199, 201, 211, 213.02, 219

Hunt's Point-Census Tracts 089, 099, 115.01, 115.02, 119, 121.01, 121.02, 123, 125, 127.01, 127.02, 129.02, 153, 155, 157, 161, excluding 081, 091, 097, 105

Jerome Park-Census Tract 273, excluding 267, 277, 279, 281, 409

Kingsbridge Heights-Census Tracts 263, 265, excluding 261, 269, 271.02

Longwood-Census Tracts 083, 085, 087, 129.01, 131

Melrose-Census Tracts 065, 067, 069, 139, 141, 143

Morris Heights-Census Tracts 205, 213.01, 215.01, 215.02, 217.01, 243, 245

Morrisania-Census Tracts 135, 149, 151

Mott Haven-Census Tracts 023, 025, 027.01, 027.02, 031, 033, 035, 037, 039, 041, 043, 047, 049, 071, 073, 075, 077, 079

Mount Eden-Census Tracts 225, 227.03, 229.02, excluding 171

Mount Hope-Census Tracts 227.01, 229.01, 231, 233.01, 233.02, 235.01, 235.02, 241, 379, 381

Norwood-Census Tract 431, excluding 419, 421, 423, 425, 429.01, 429.02

Olinville-Census Tracts 374, 376, excluding 370, 372

Park Stratton-Census Tract 218, excluding 216.01

Port Morris-Census Tracts 011, 015, 017

Parkchester-Census Tract 206.02, excluding 208, 210, 212, 216.02

Soundview-Census Tracts 016, 020, 036, 038, 046, excluding 024, 028, 040.02

Soundview/Bruckner-Census Tracts 044, 048, 050, 052, 068, 070, excluding 040.01, 072

Throgs Neck-Census Tracts 110, 144, excluding 130, 132, 154, 156, 158, 162, 164, 166

University Heights-Census Tracts 247, 251, 253, 255, 257, excluding 249

Van Nest-Census Tracts 230, 242, excluding 232, 234, 236, 240

Wakefield-Census Tract 446, excluding 410, 414, 418, 428, 430, 432, 436, 438, 440, 442

West Concourse-Census Tracts 057, 059.01, 195, 197, 217.02, 221, 223, 227.02, excluding 187

West Farms-Census Tracts 060, 220

Williamsbridge-Census Tracts 390, 406, excluding 368, 378, 380, 382, 388, 392, 394, 396, 398, 404, 408, 420, 422, 424

Woodstock-Census Tracts 133, 137

Staten Island

Arlington-Census Tract 319.02

Clifton/Fox Hills-Census Tract 40

New Brighton-Census Tract 77, excluding 81

Port Richmond-Census Tract 207, excluding 213, 219, 247

St. George-Census Tracts 7, 11, excluding 3, 9

Stapleton-Census Tracts 15, 21, 27, 29

West Brighton/Bodine Creek-Census Tracts 133.01, 133.02, excluding 65, 105, 121, 125, 141

Posebank/Arrochar-Census Tract 74, excluding 8, 20.01, 20.02, 36

FOOTNOTES

1

[Footnote 1]: * Appendix redesignated by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, Appendix A to Chapter 1.

Rules of the City of New York

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

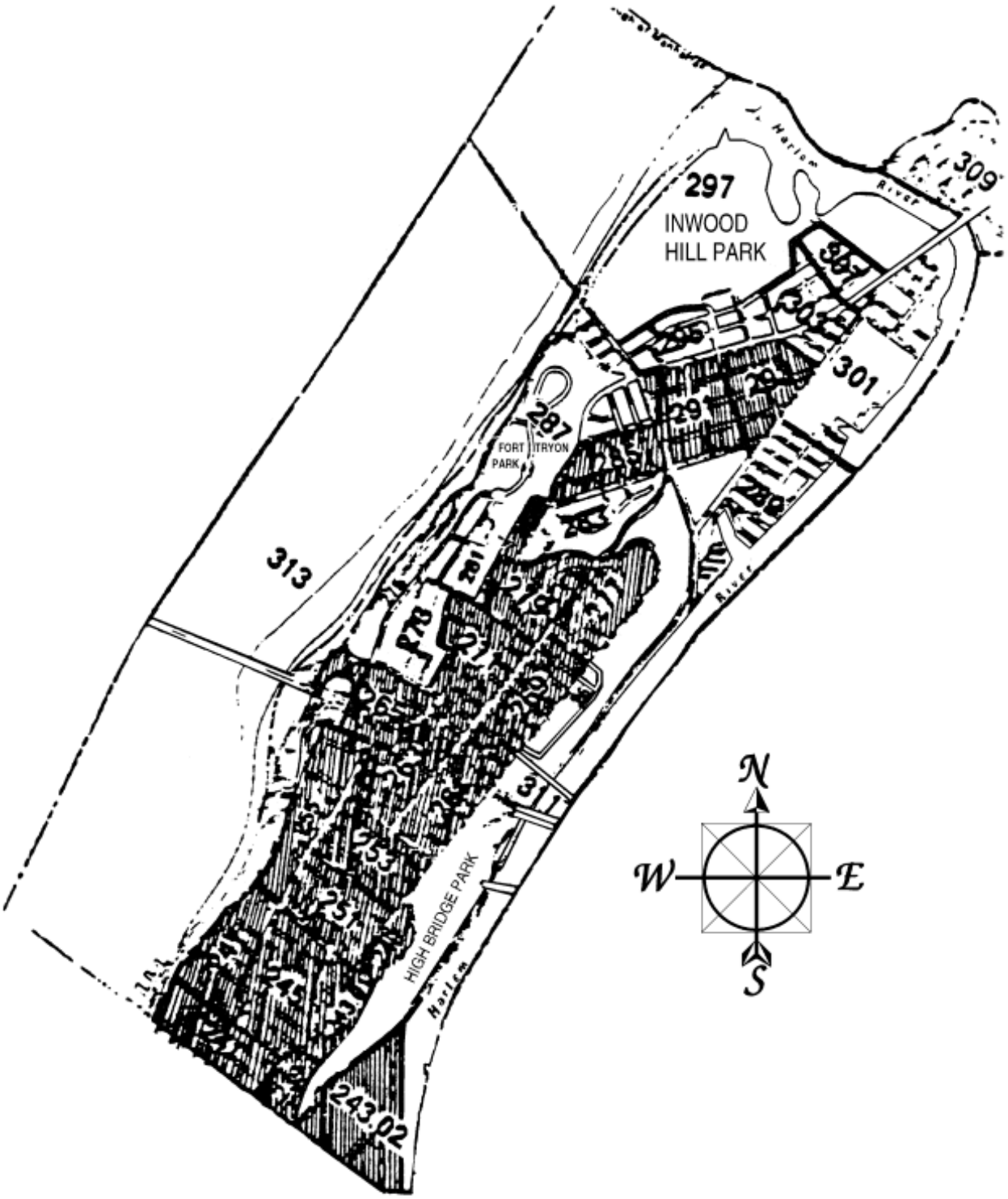
66 RCNY 11 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX B*1 MAPS OF ECONOMIC DEVELOPMENT AREA

APPENDIX B*1 MAPS OF ECONOMIC DEVELOPMENT AREA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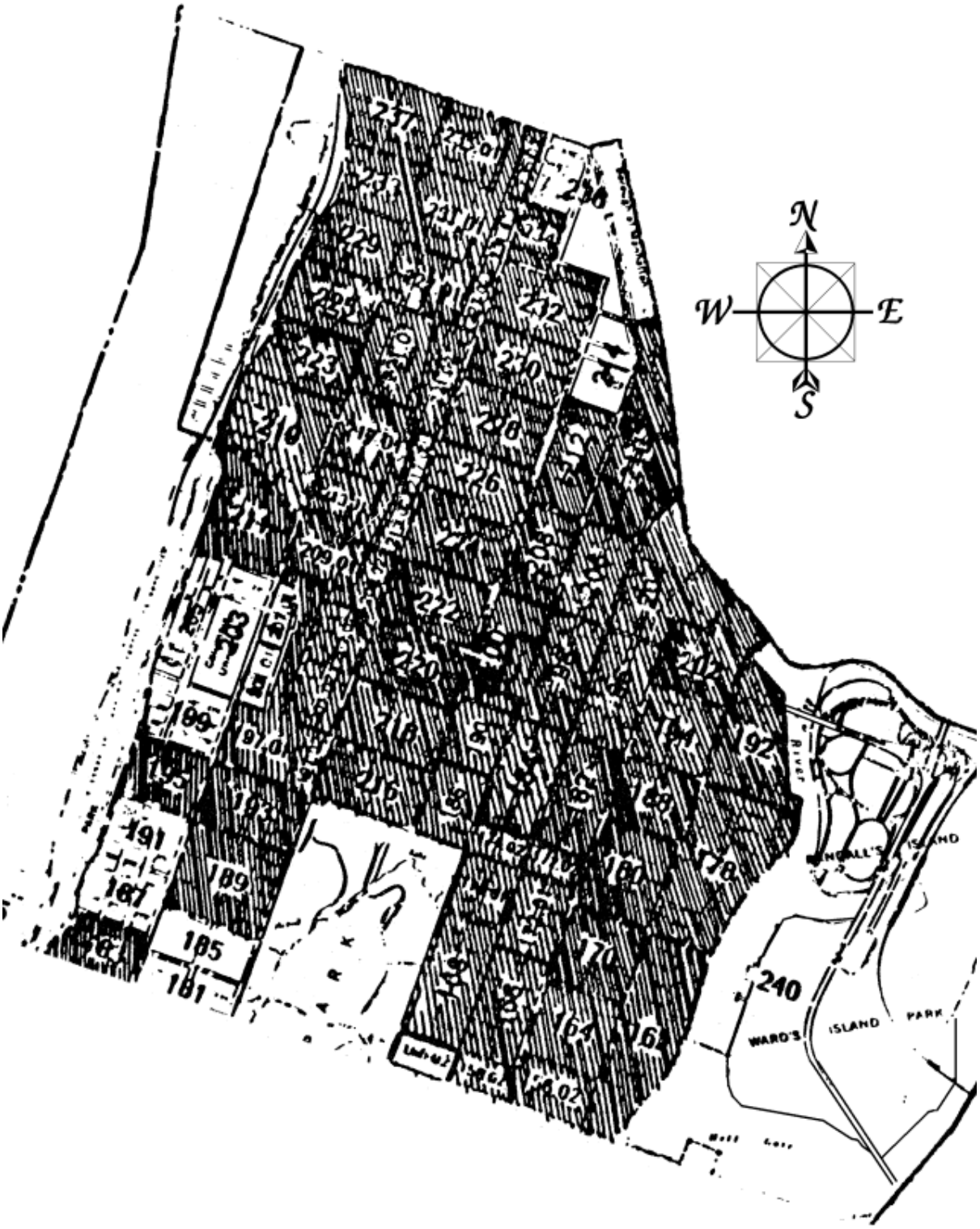
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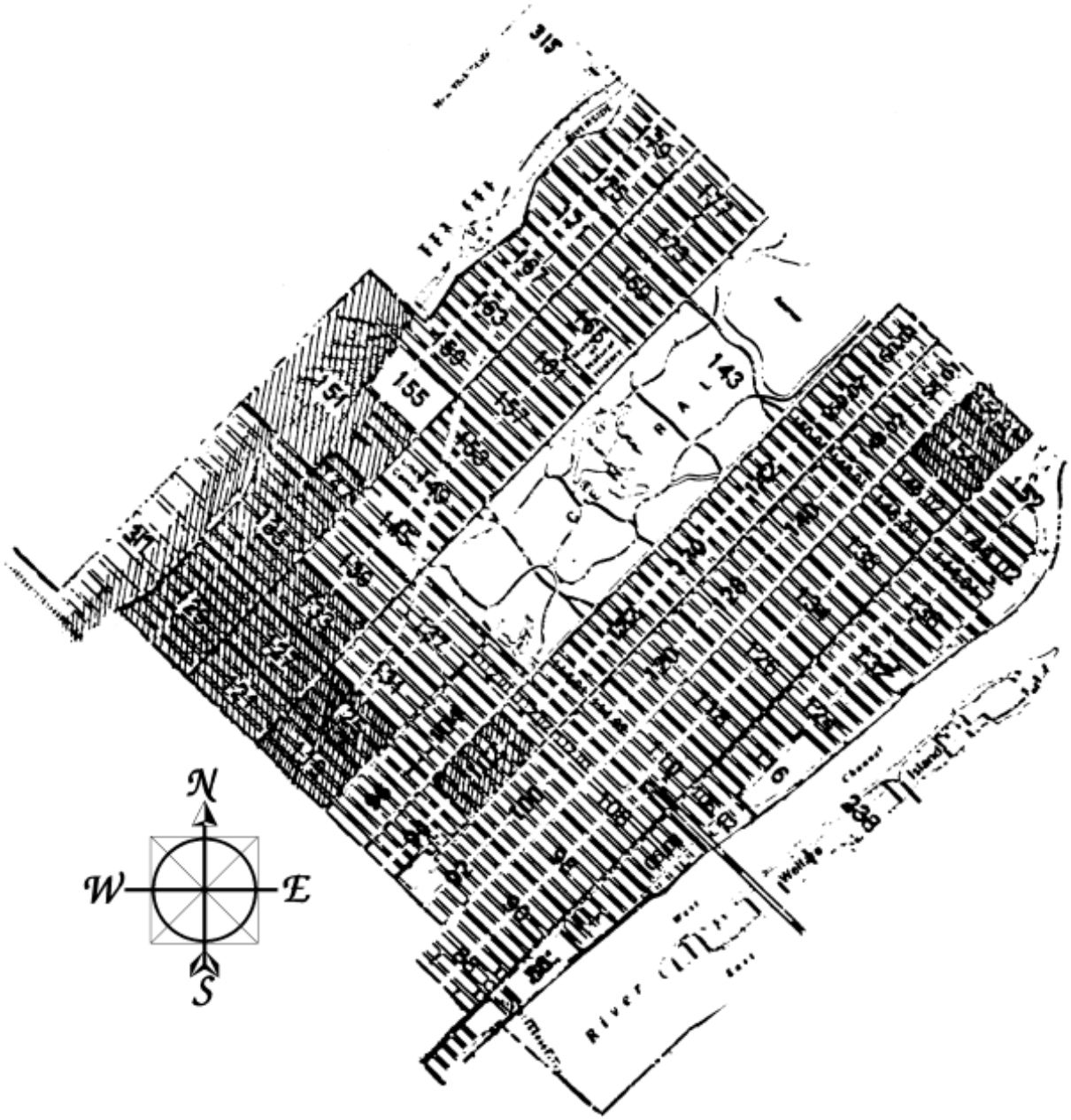
Manhattan Economic Development 2 of 5



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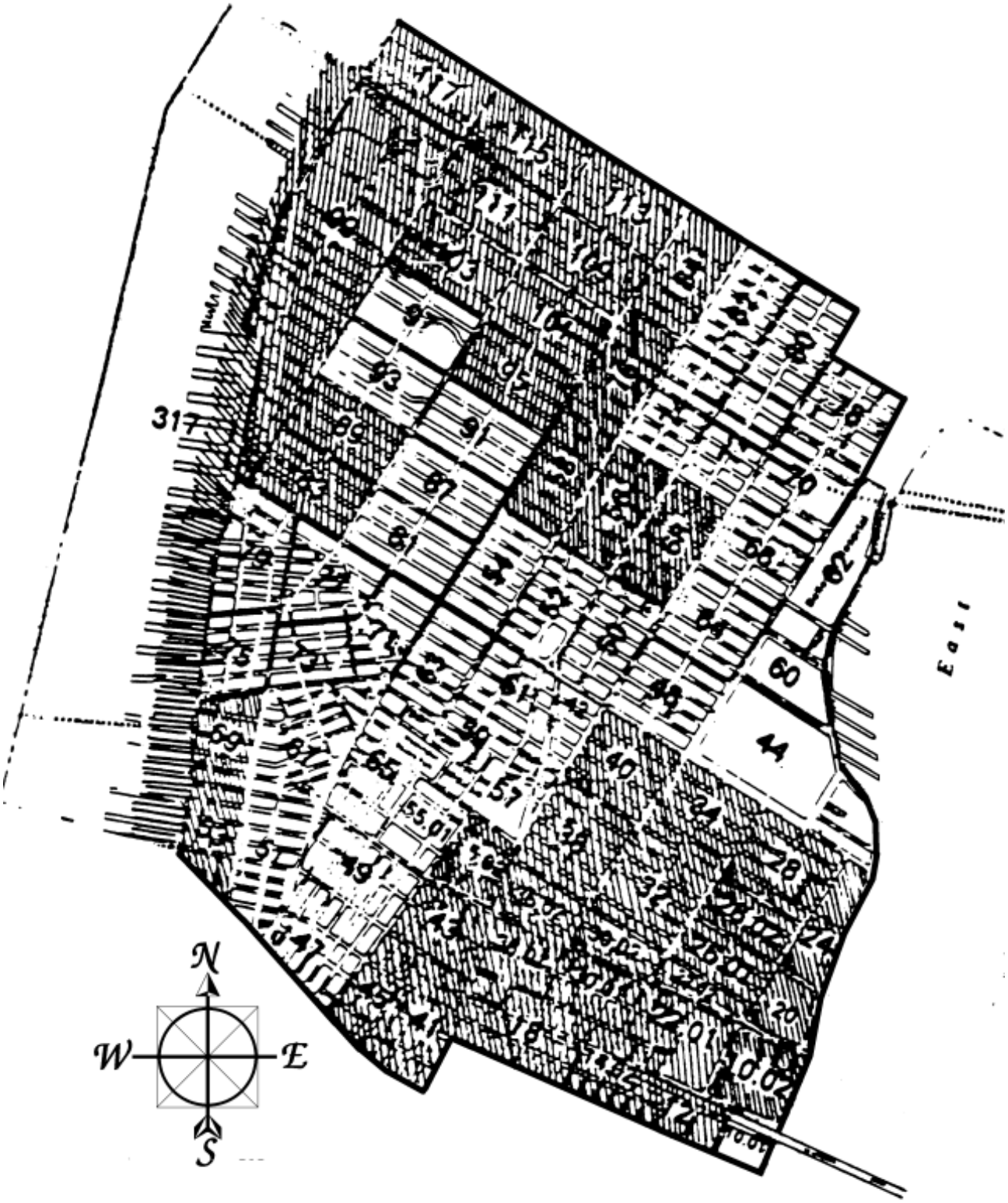
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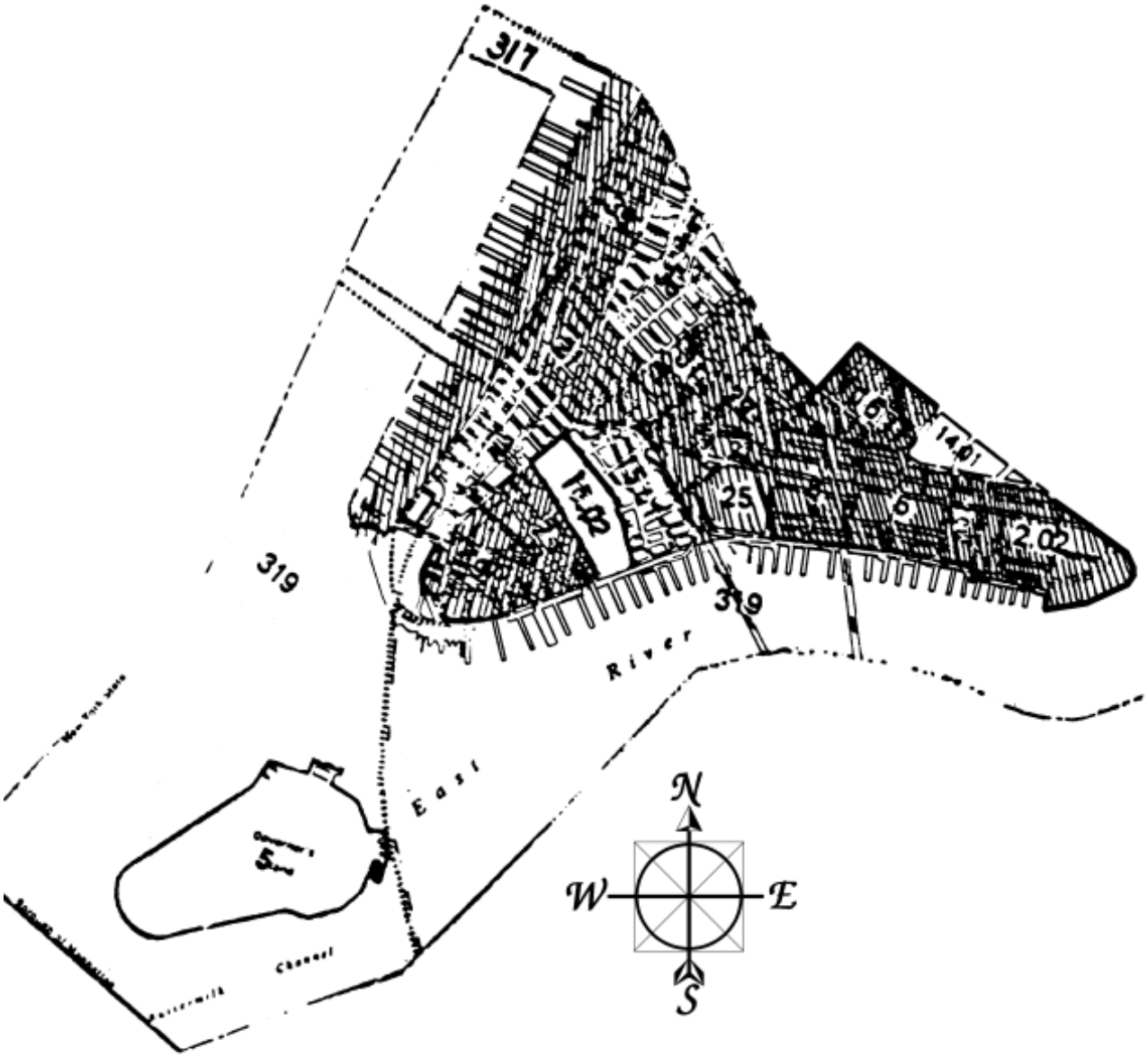
Manhattan Economic Development 4 of 5



Manhattan Economic Development 5 of 5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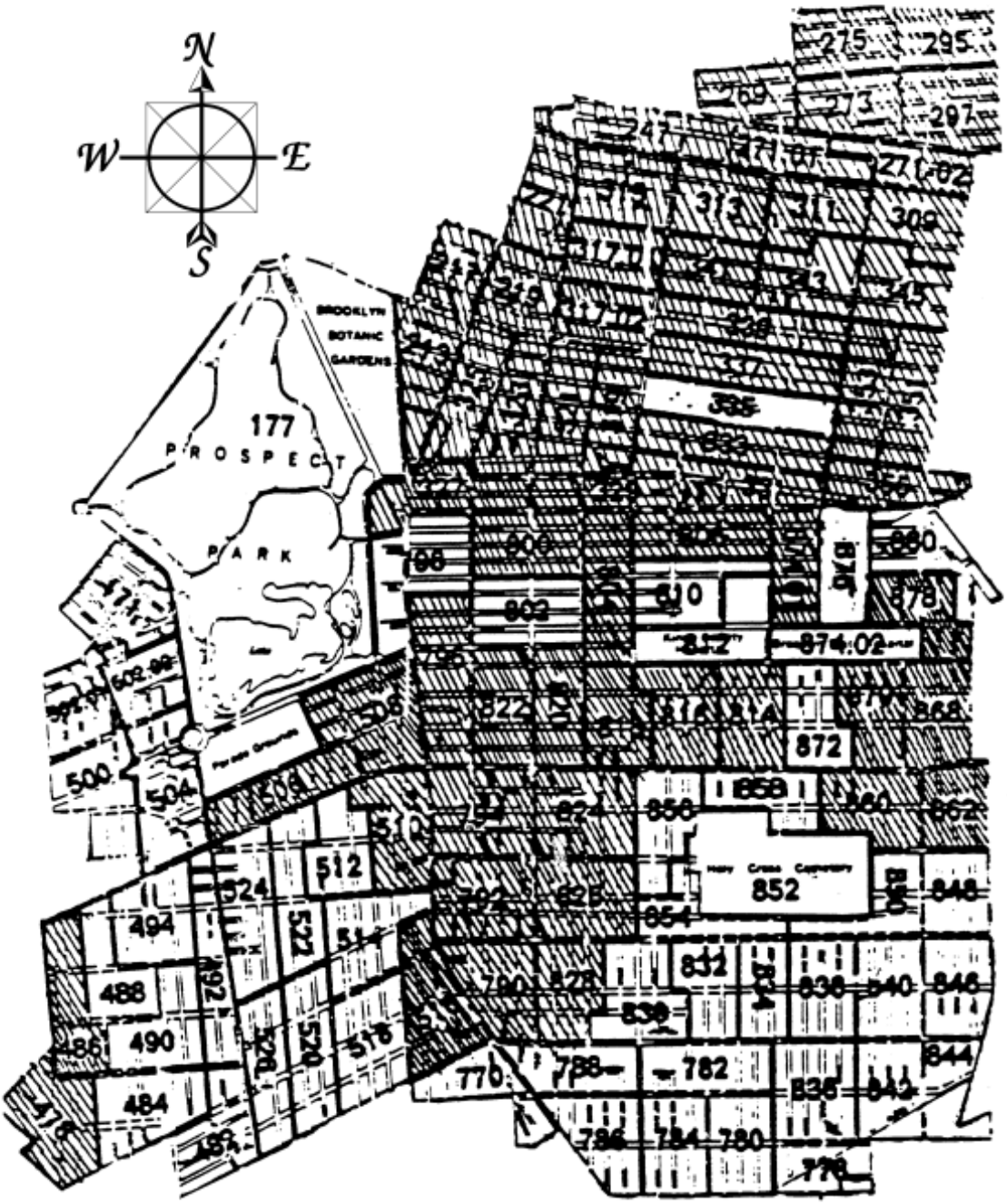
Brooklyn Economic Development 1 of 11

Brooklyn Economic Development 2 of 11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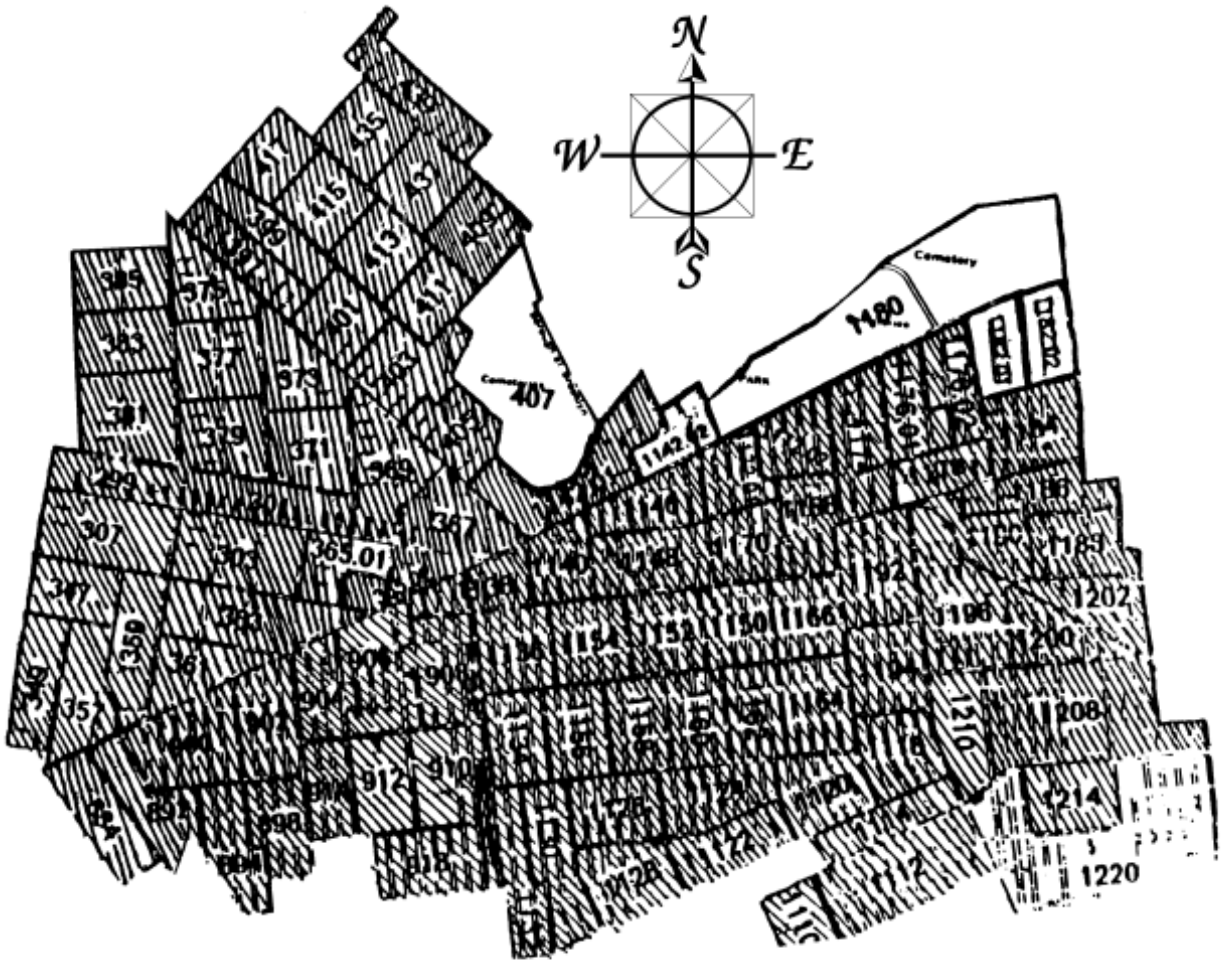
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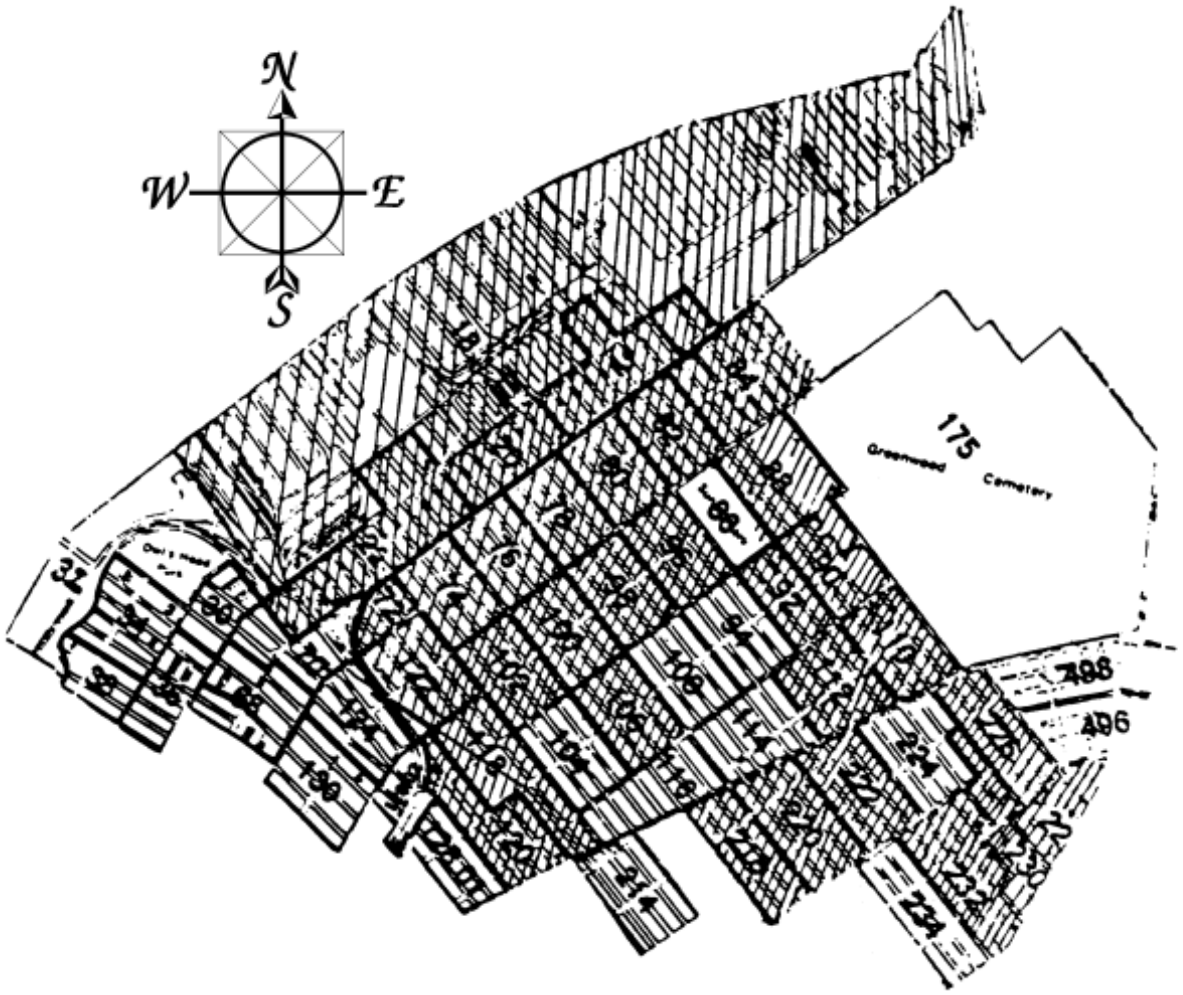
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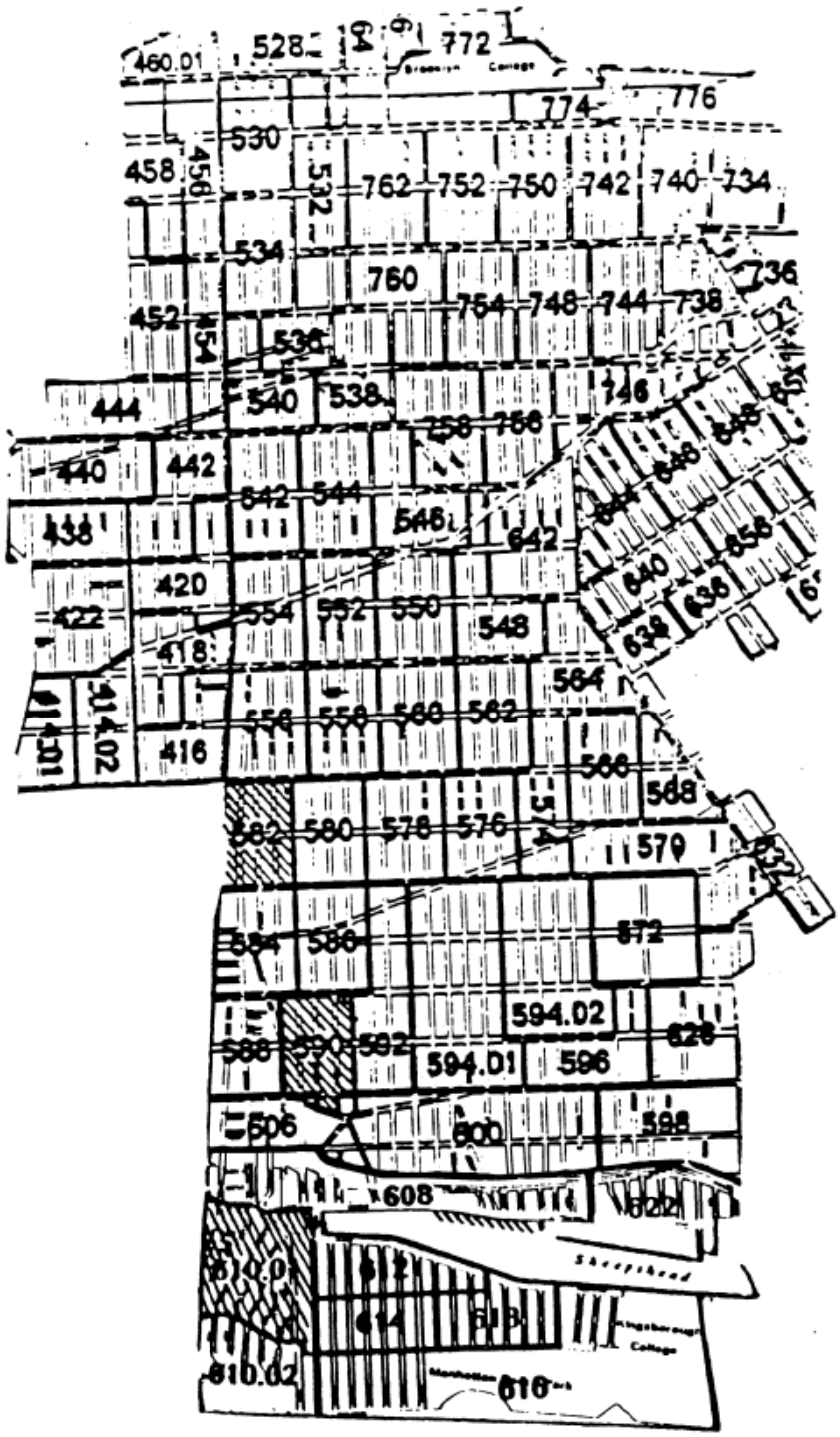
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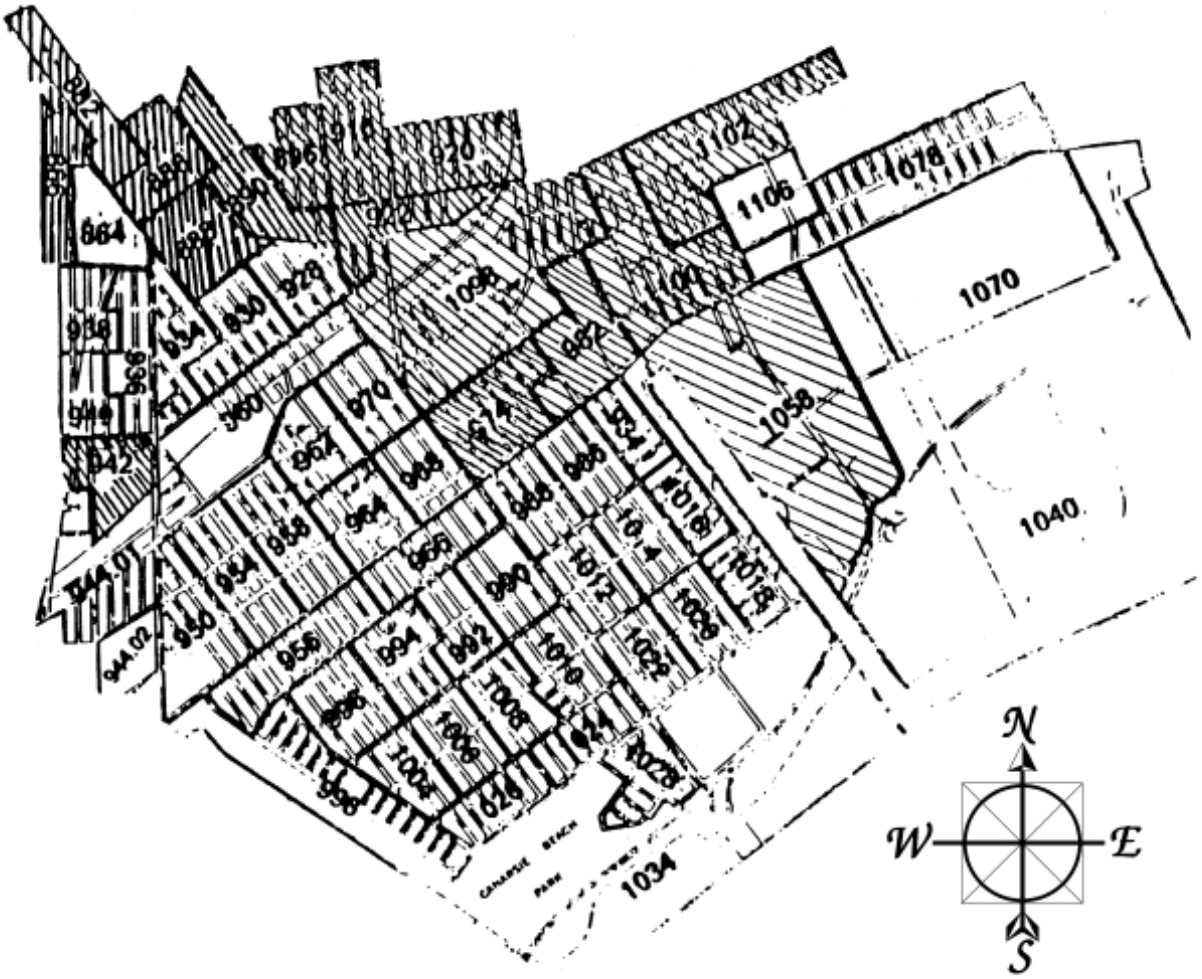
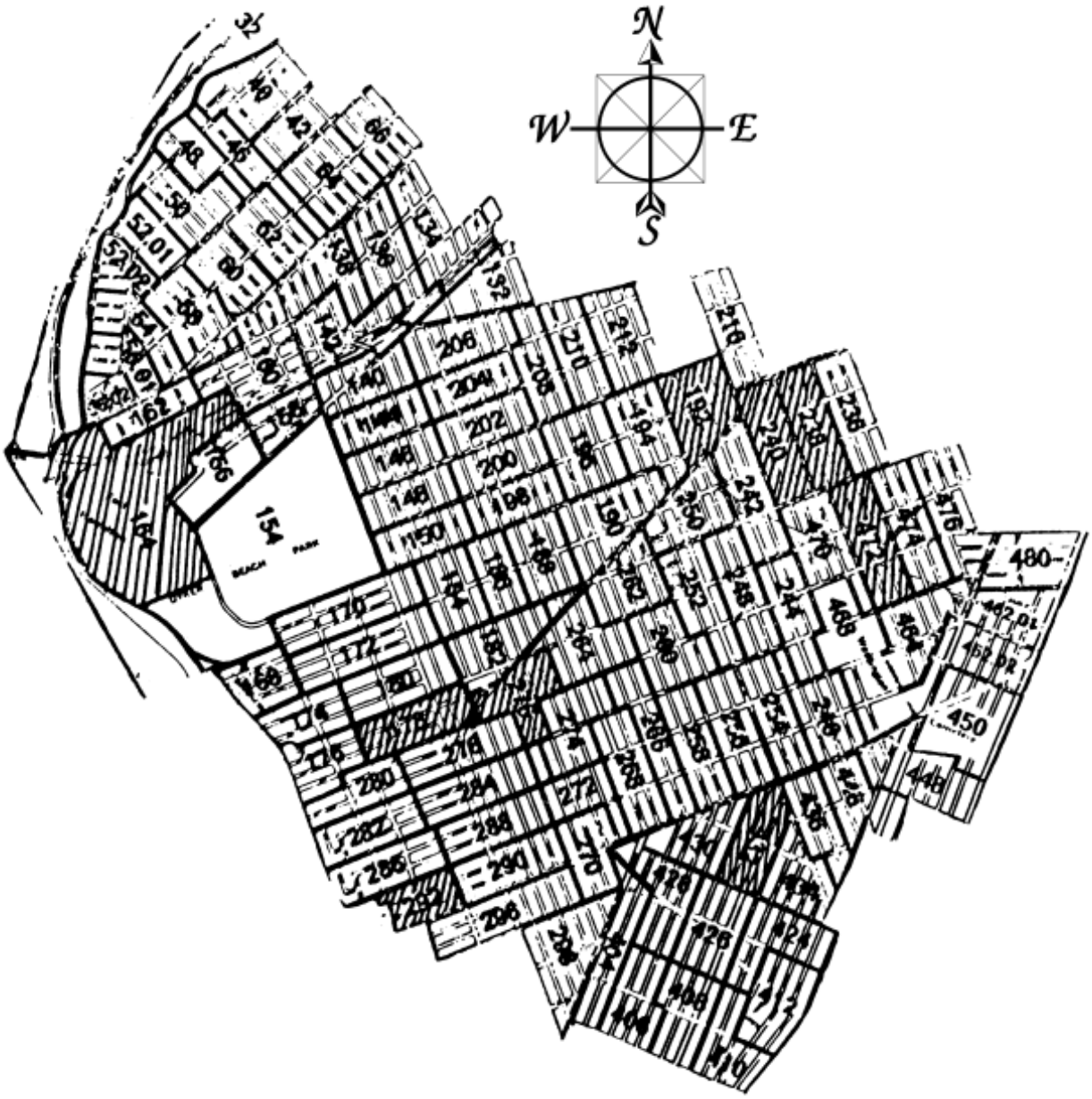
Brooklyn Economic Development 6 of 11



Brooklyn Economic Development 7 of 11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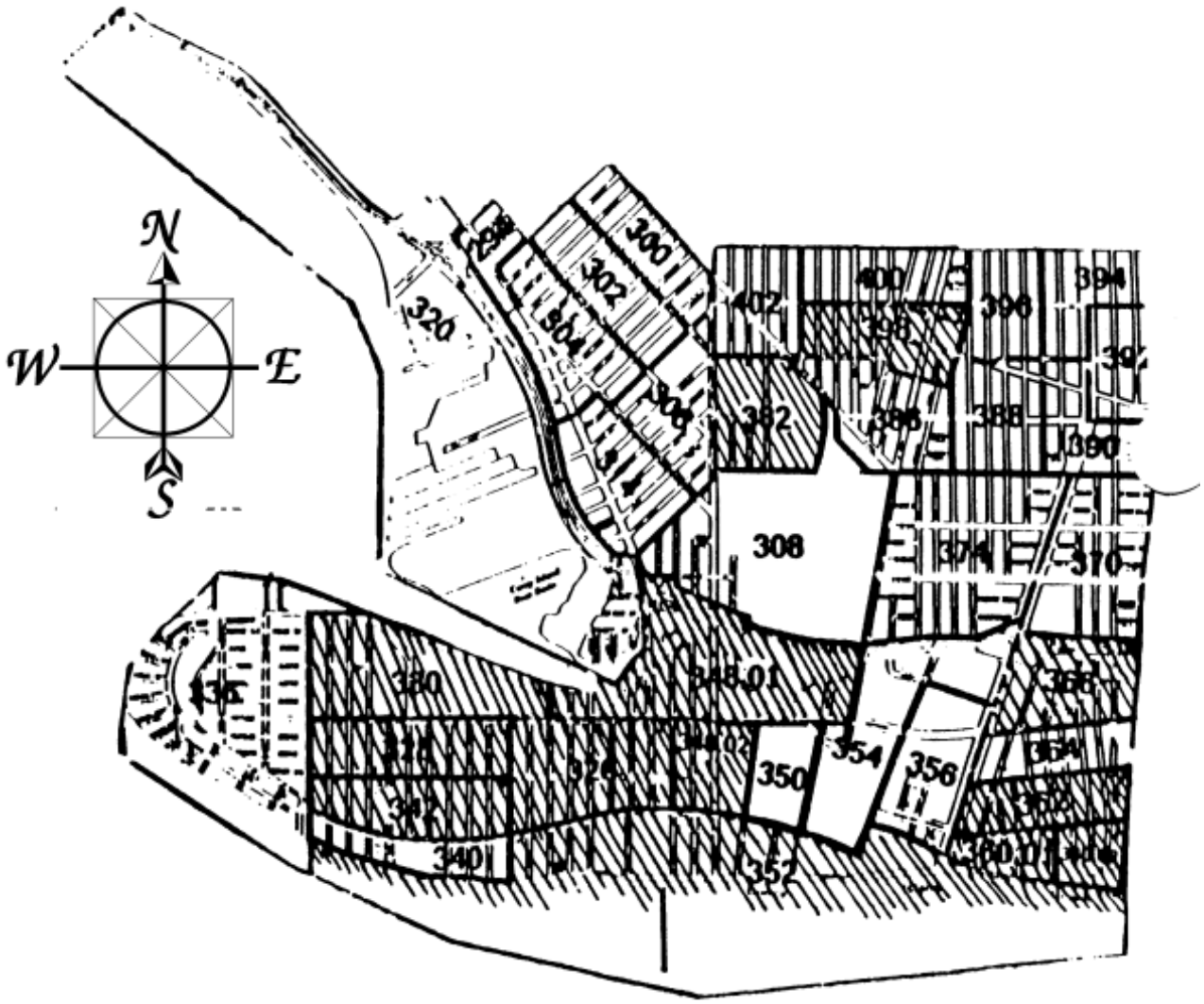
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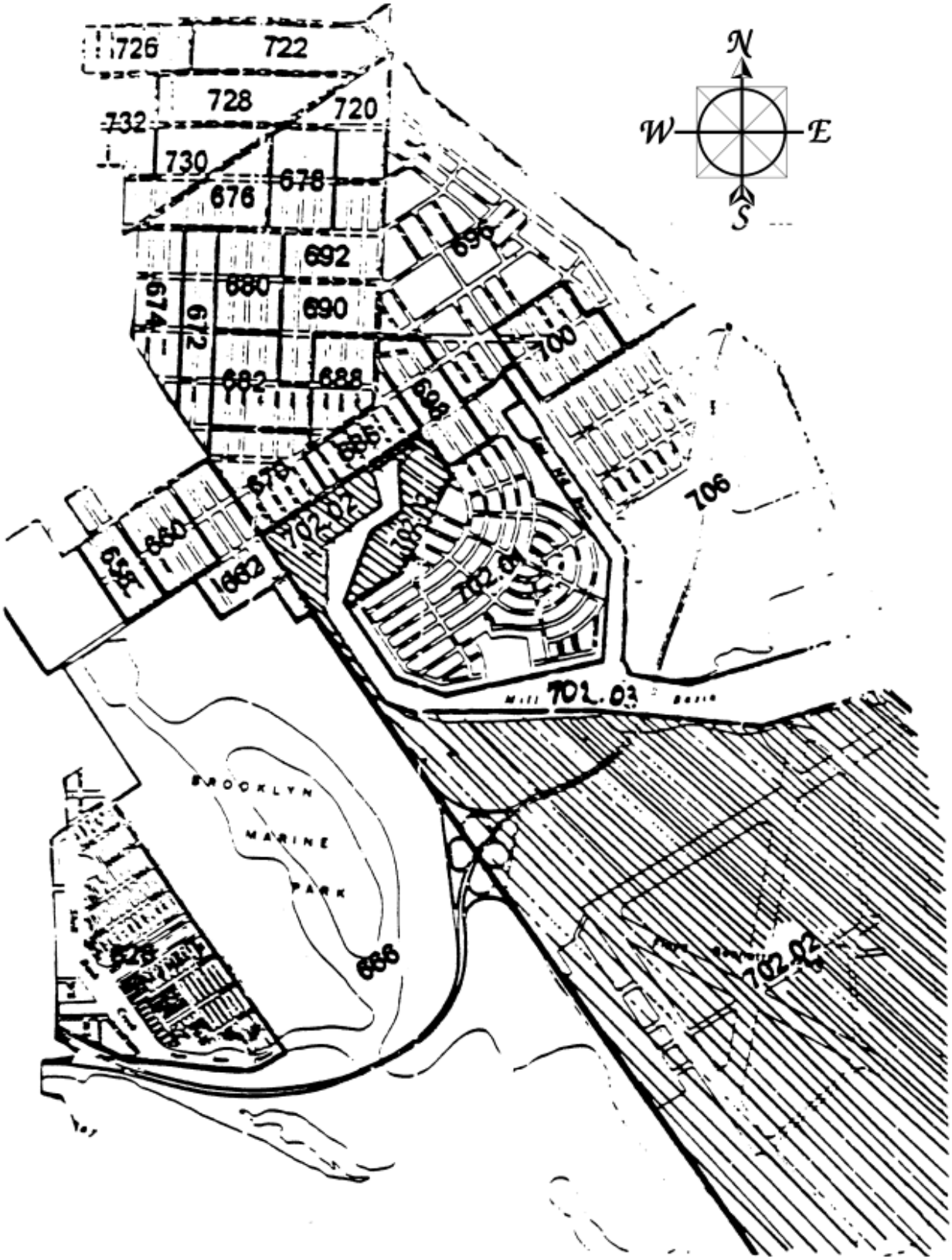
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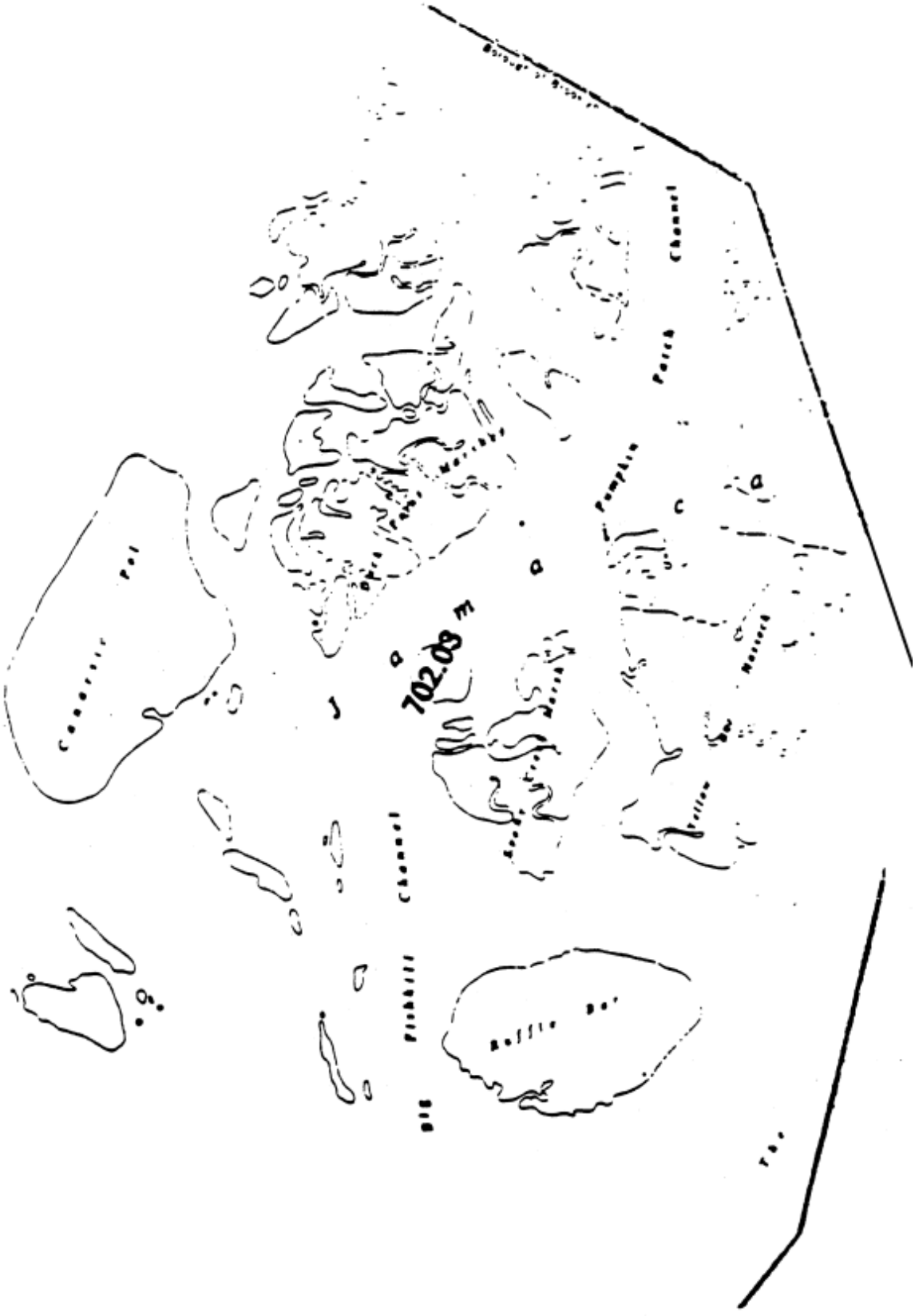
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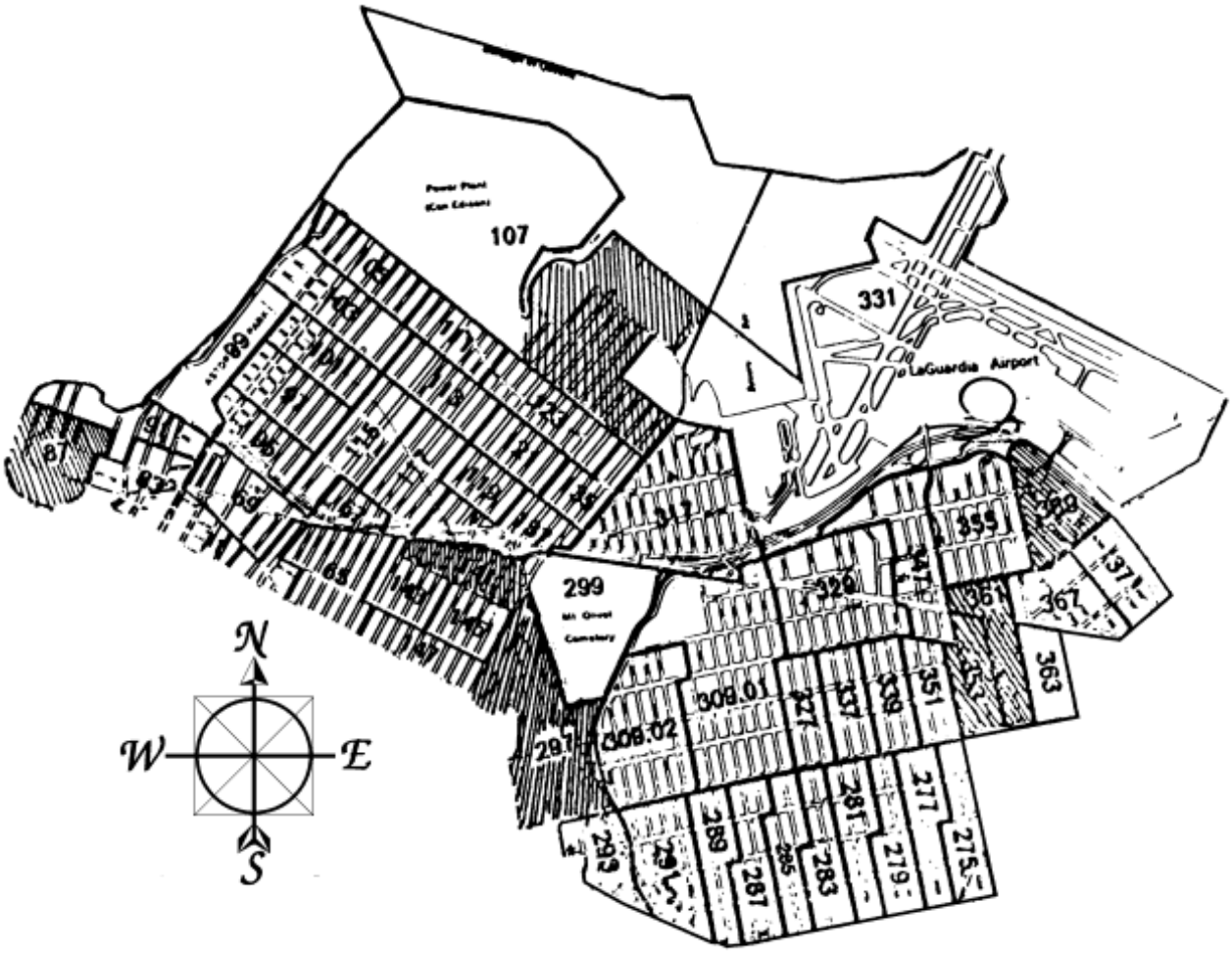
Brooklyn Economic Development 11 of 11



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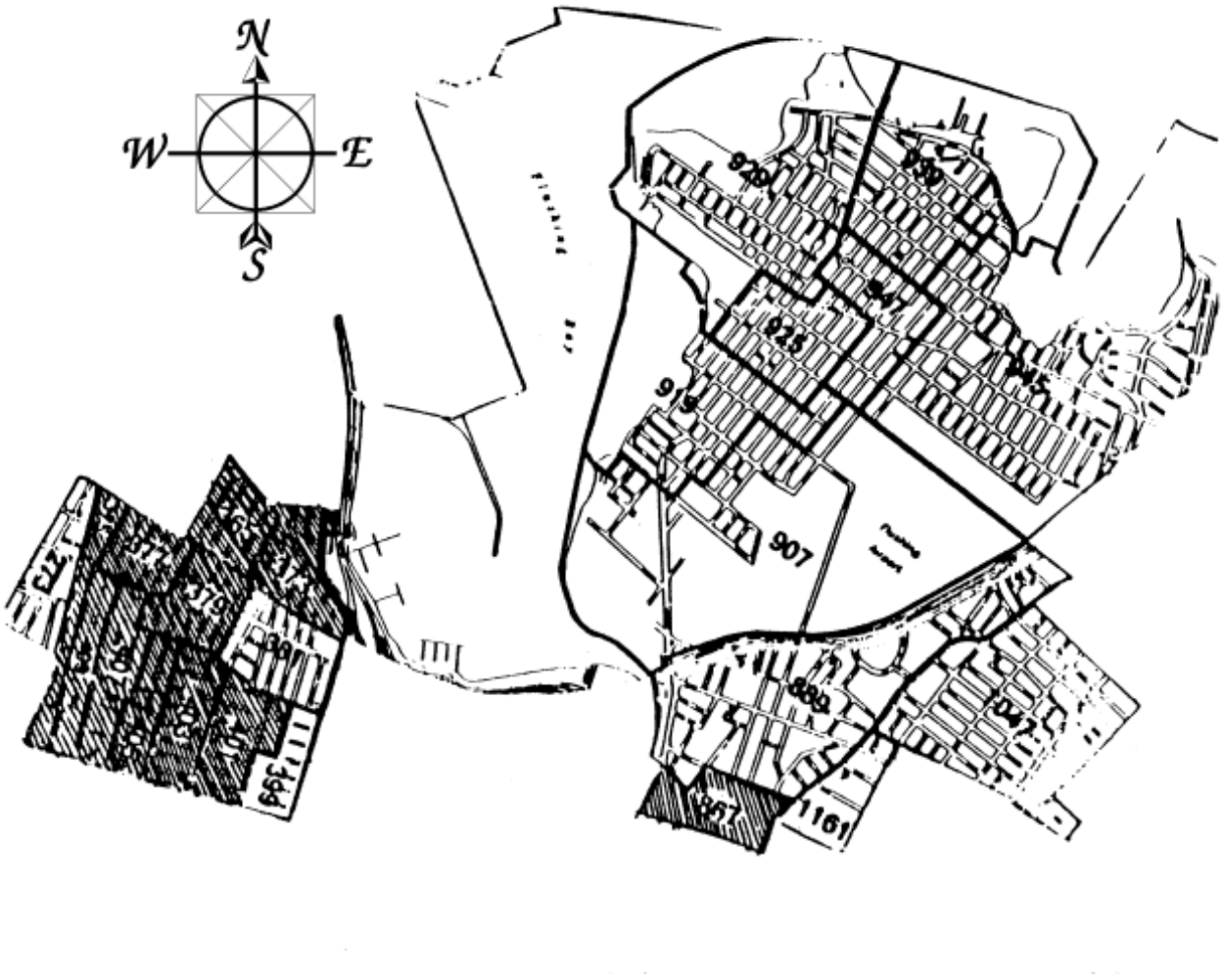
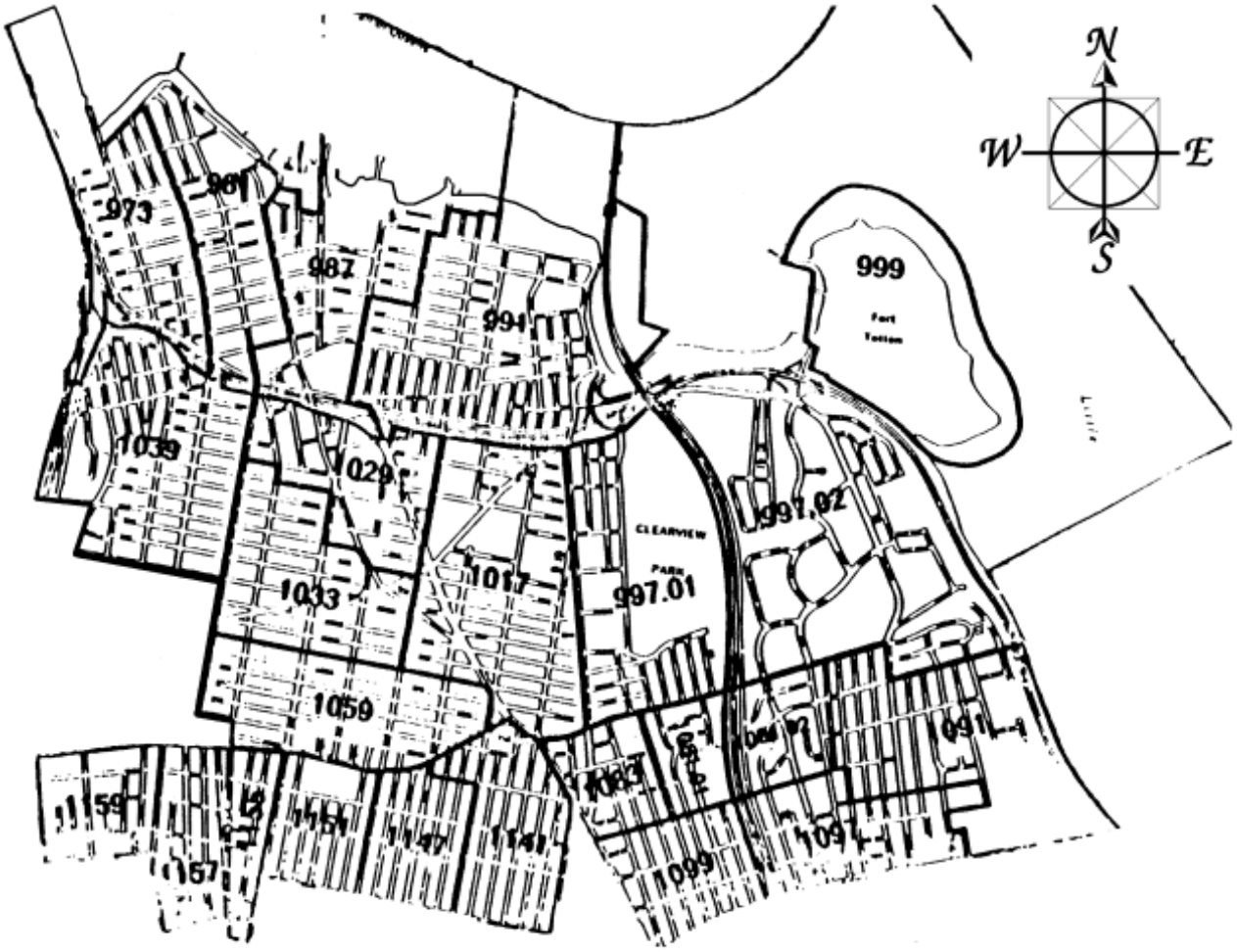


Queens Economic Development 2 of 17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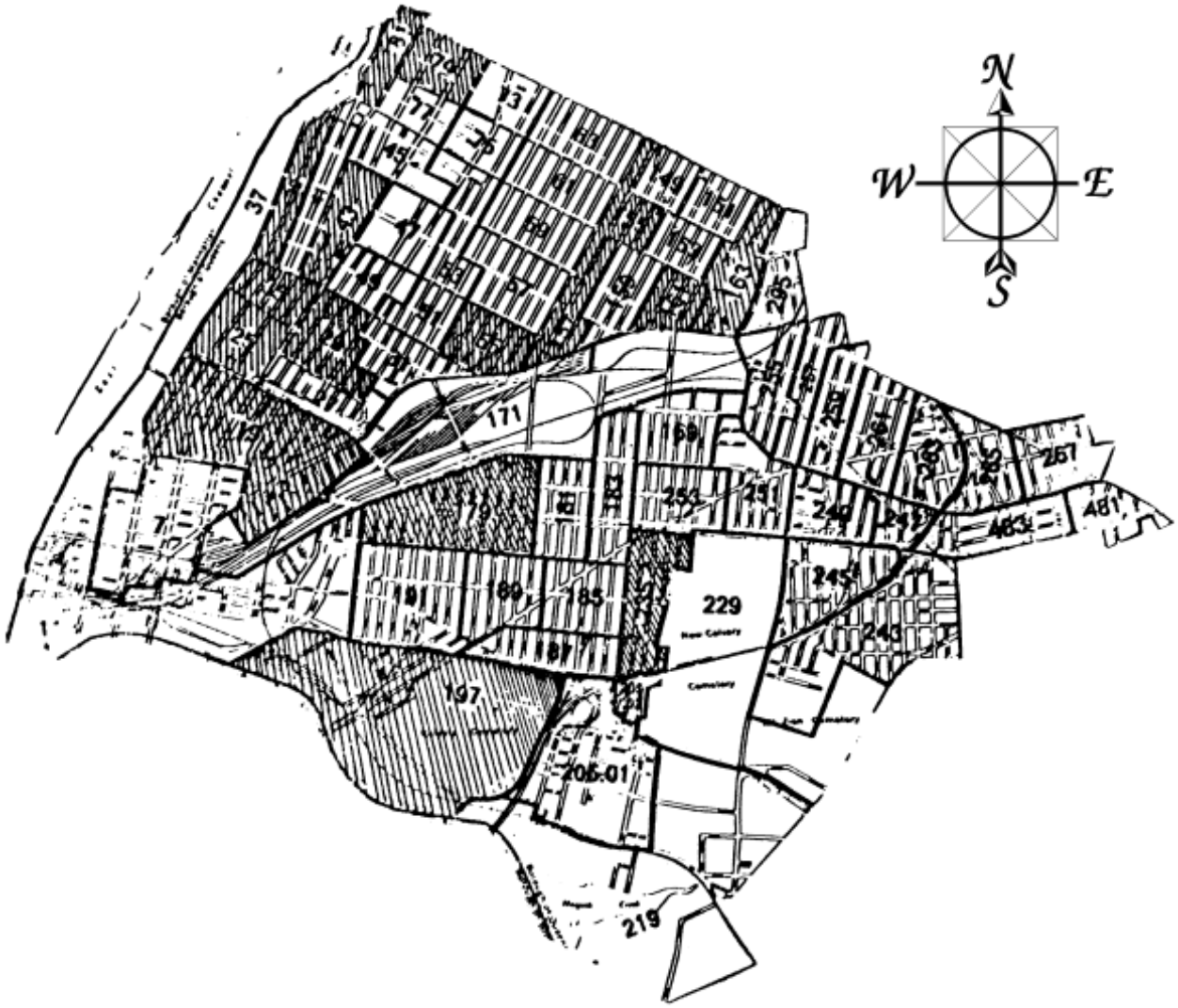
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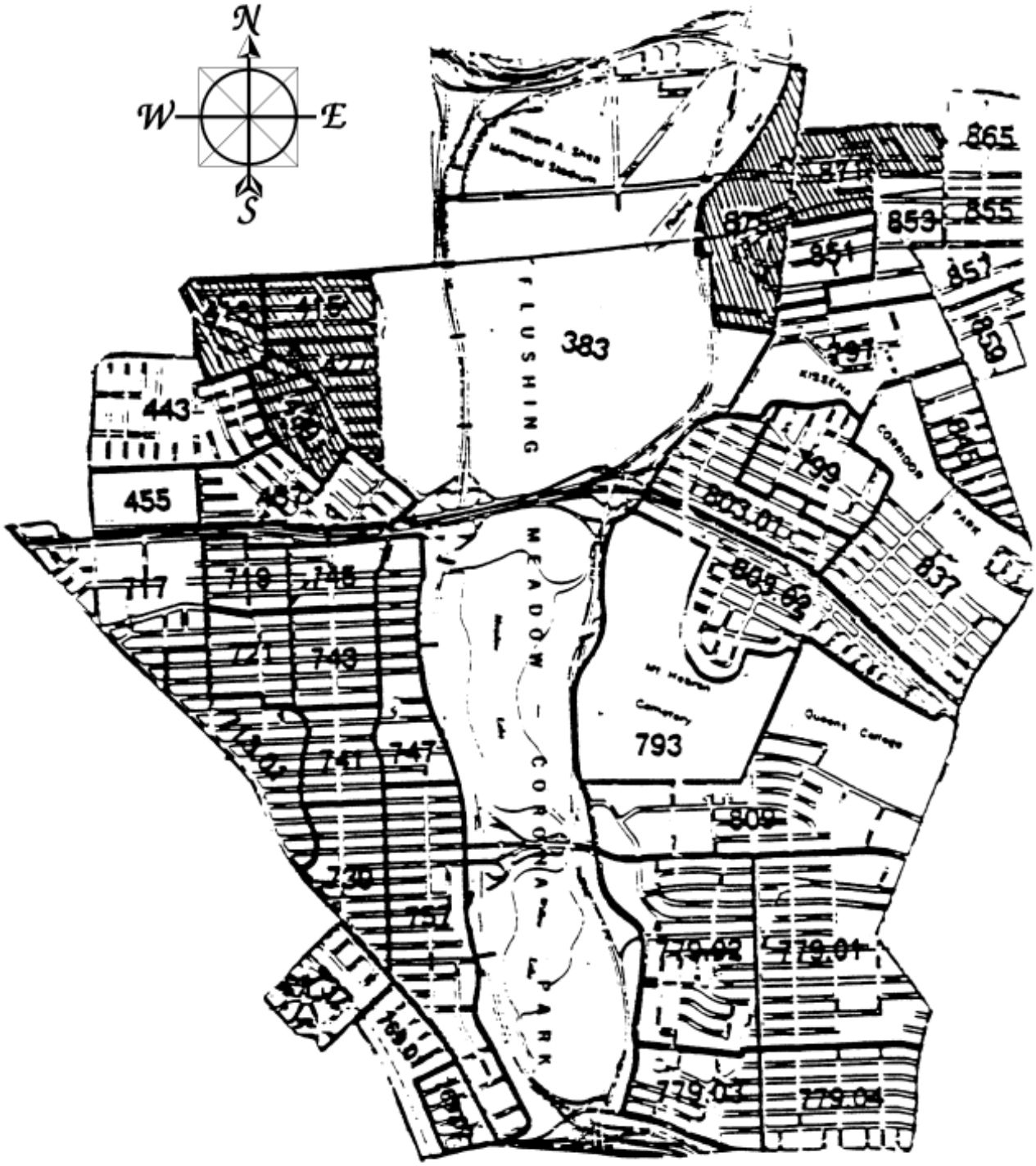
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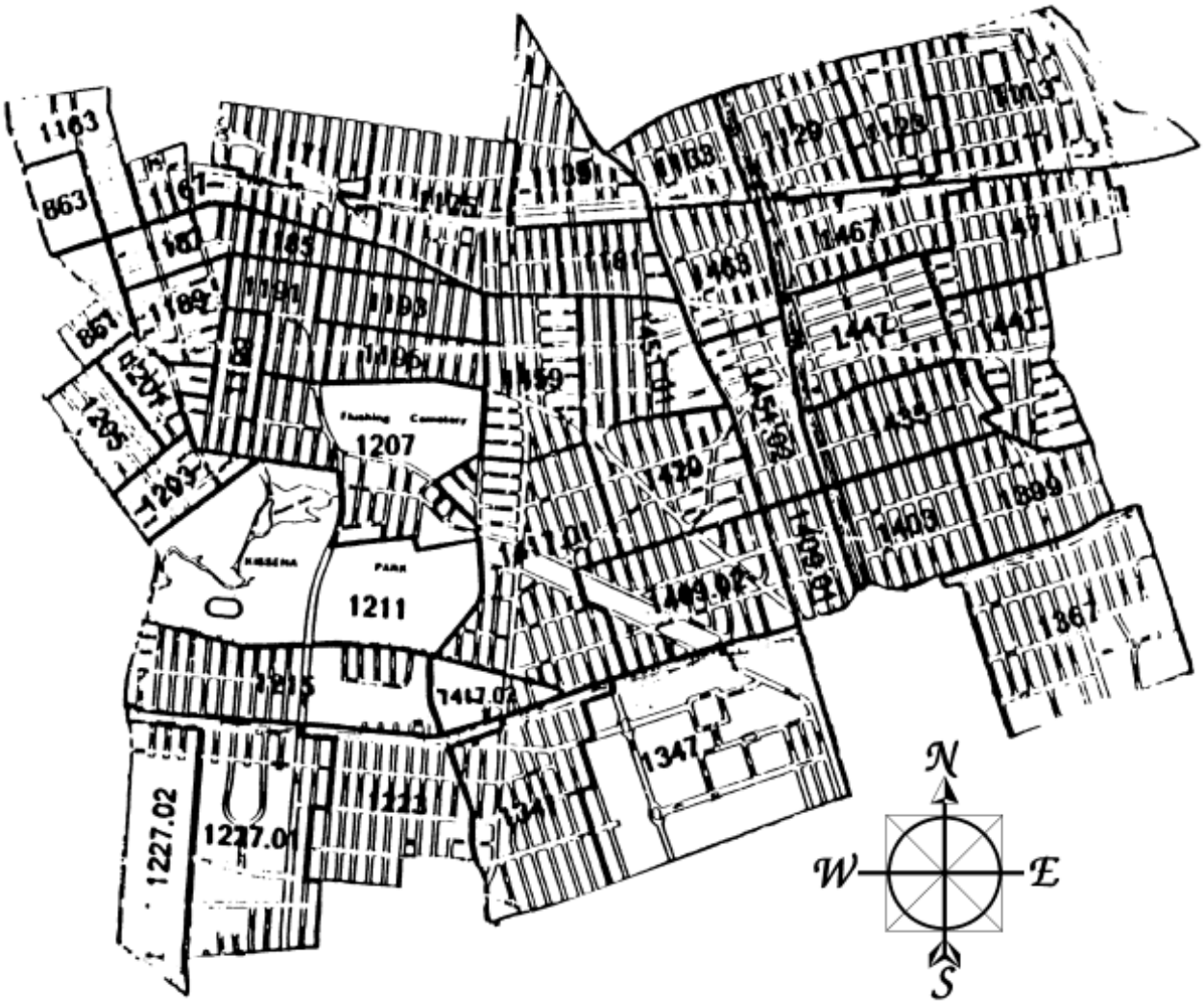
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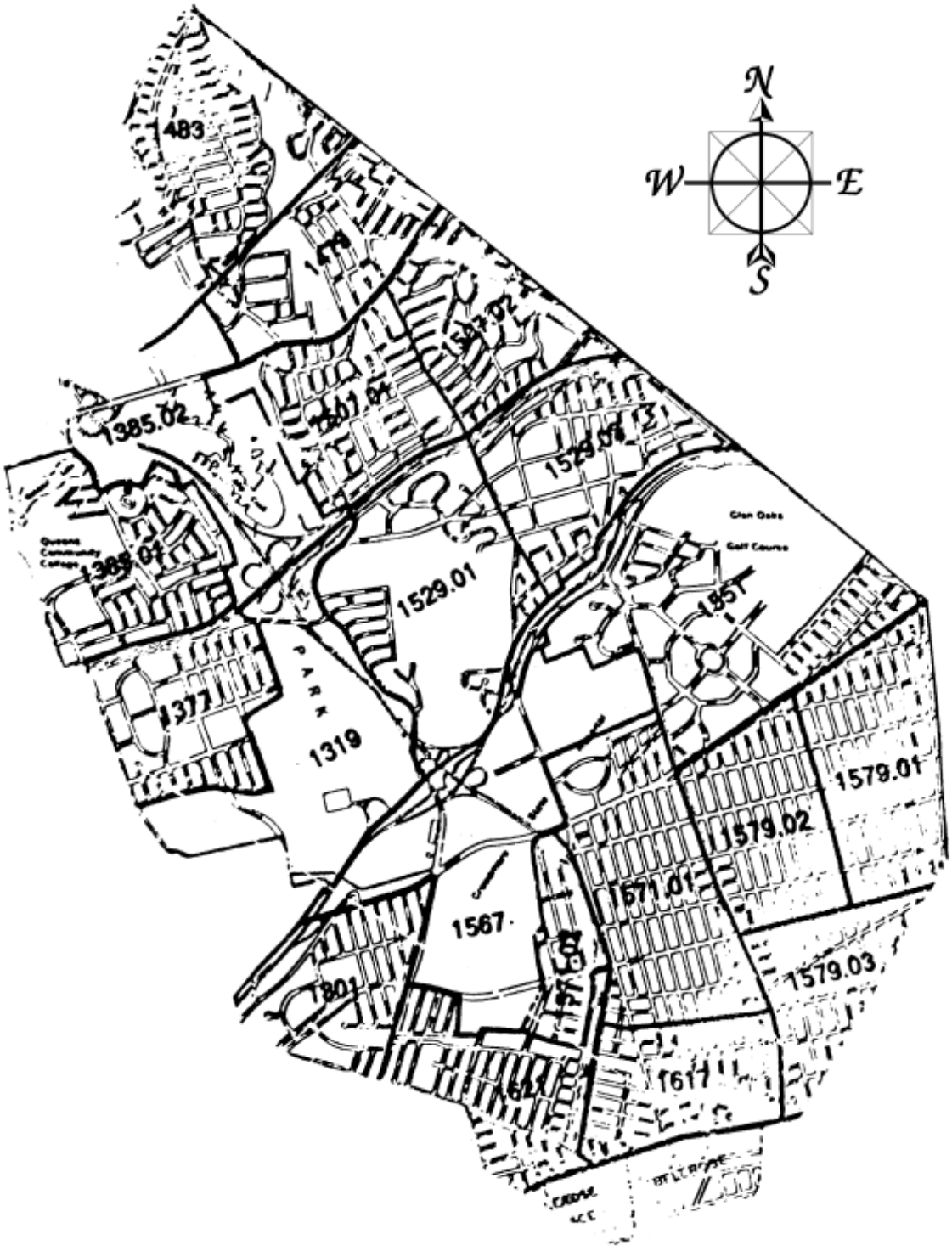
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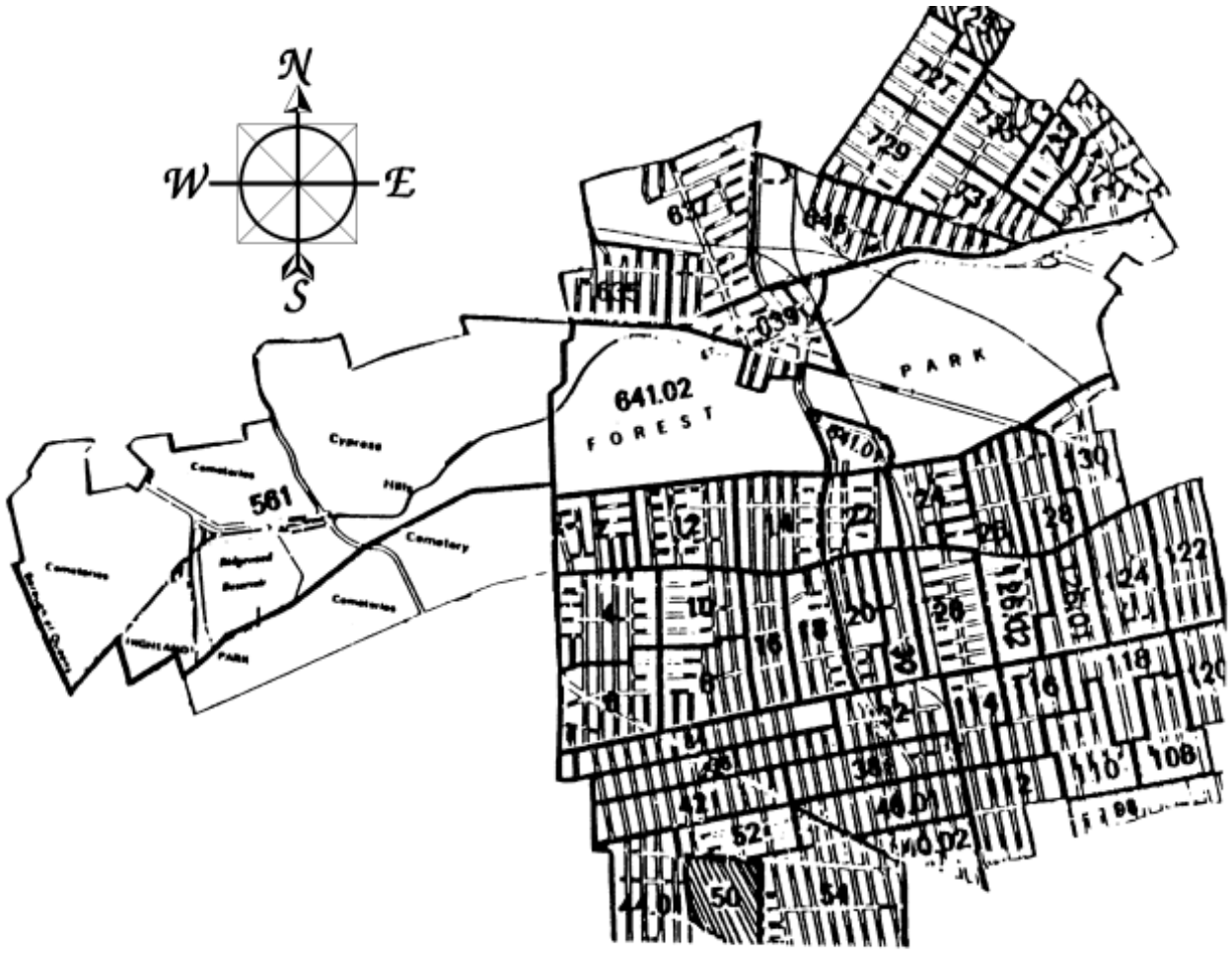
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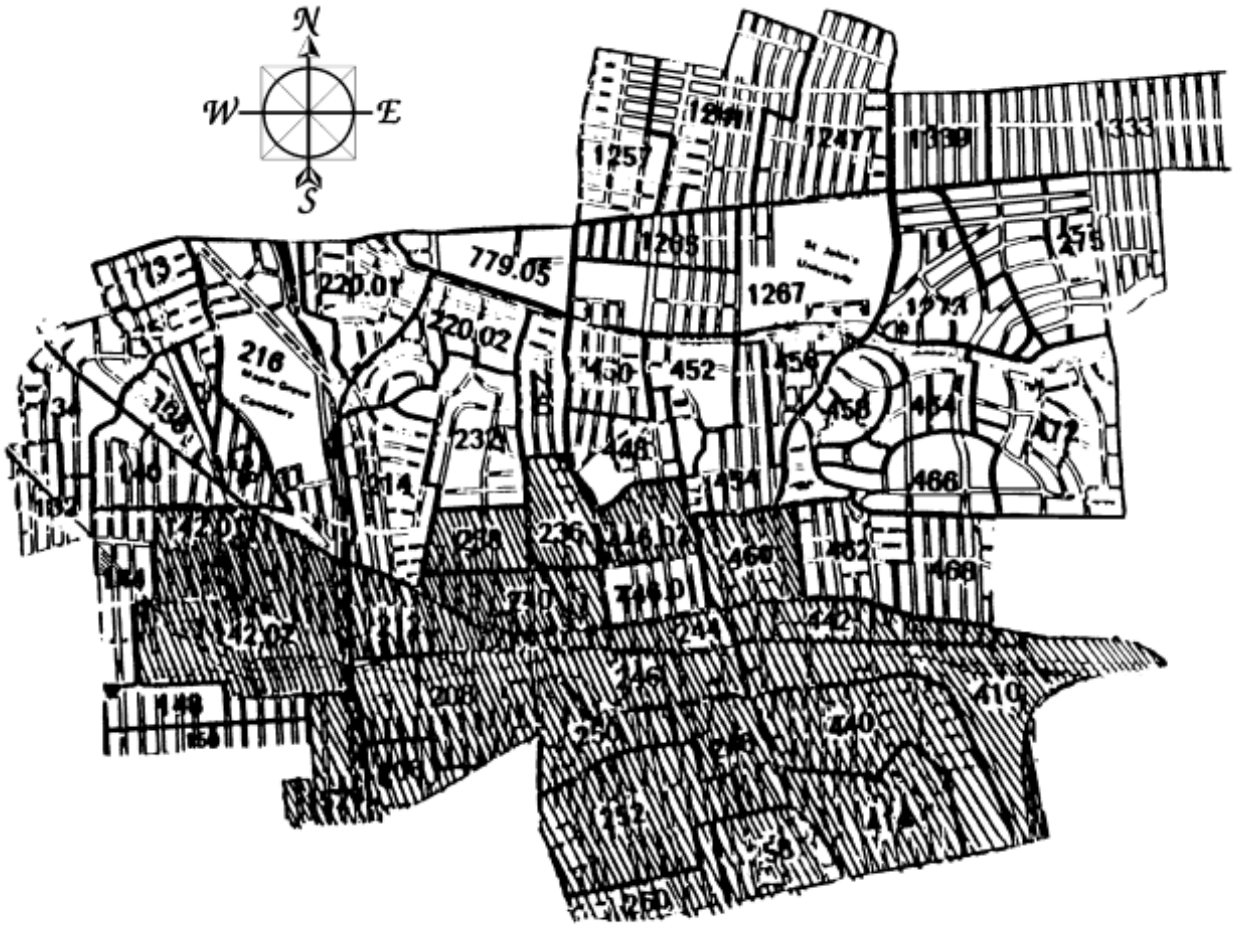
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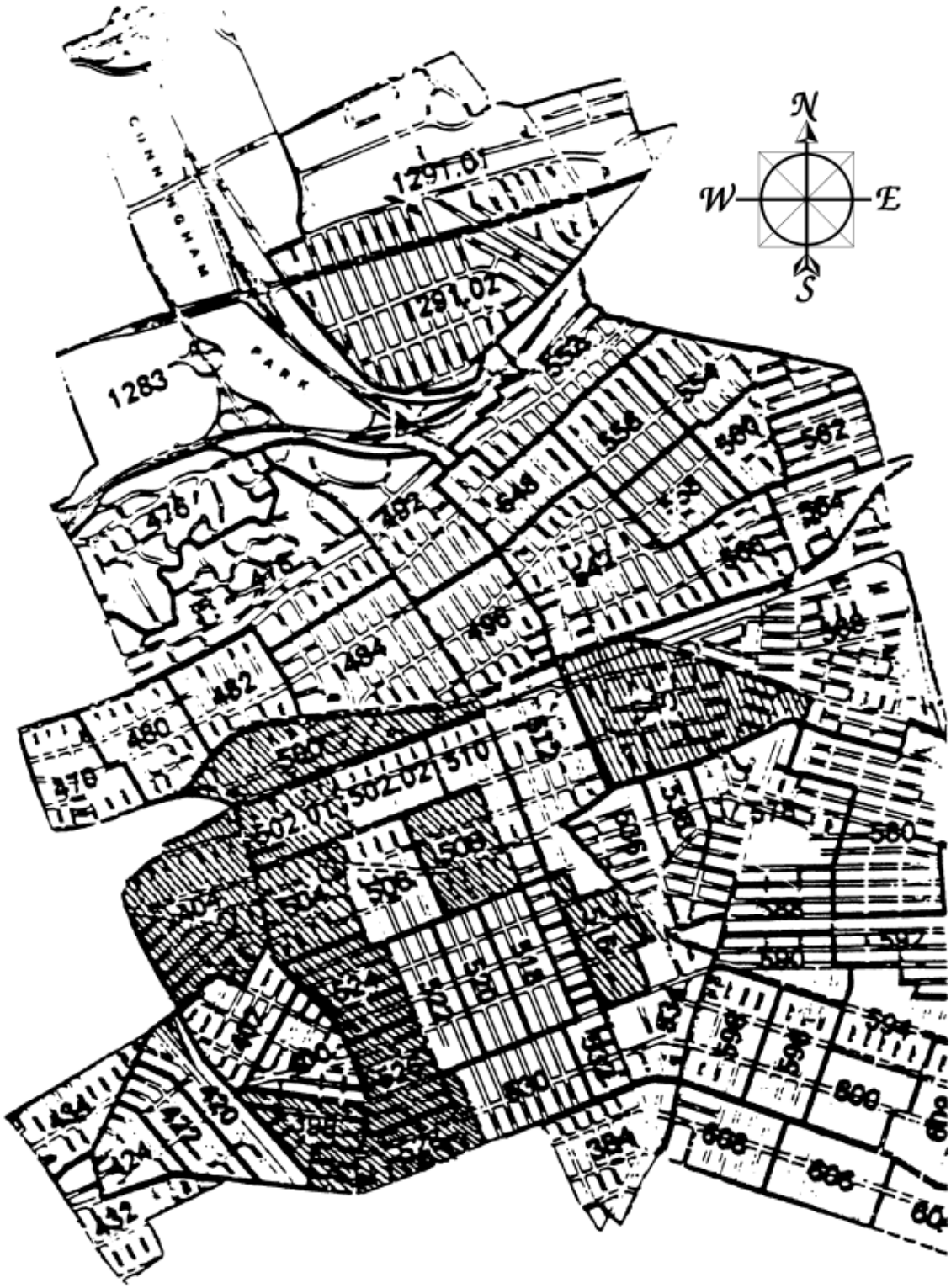
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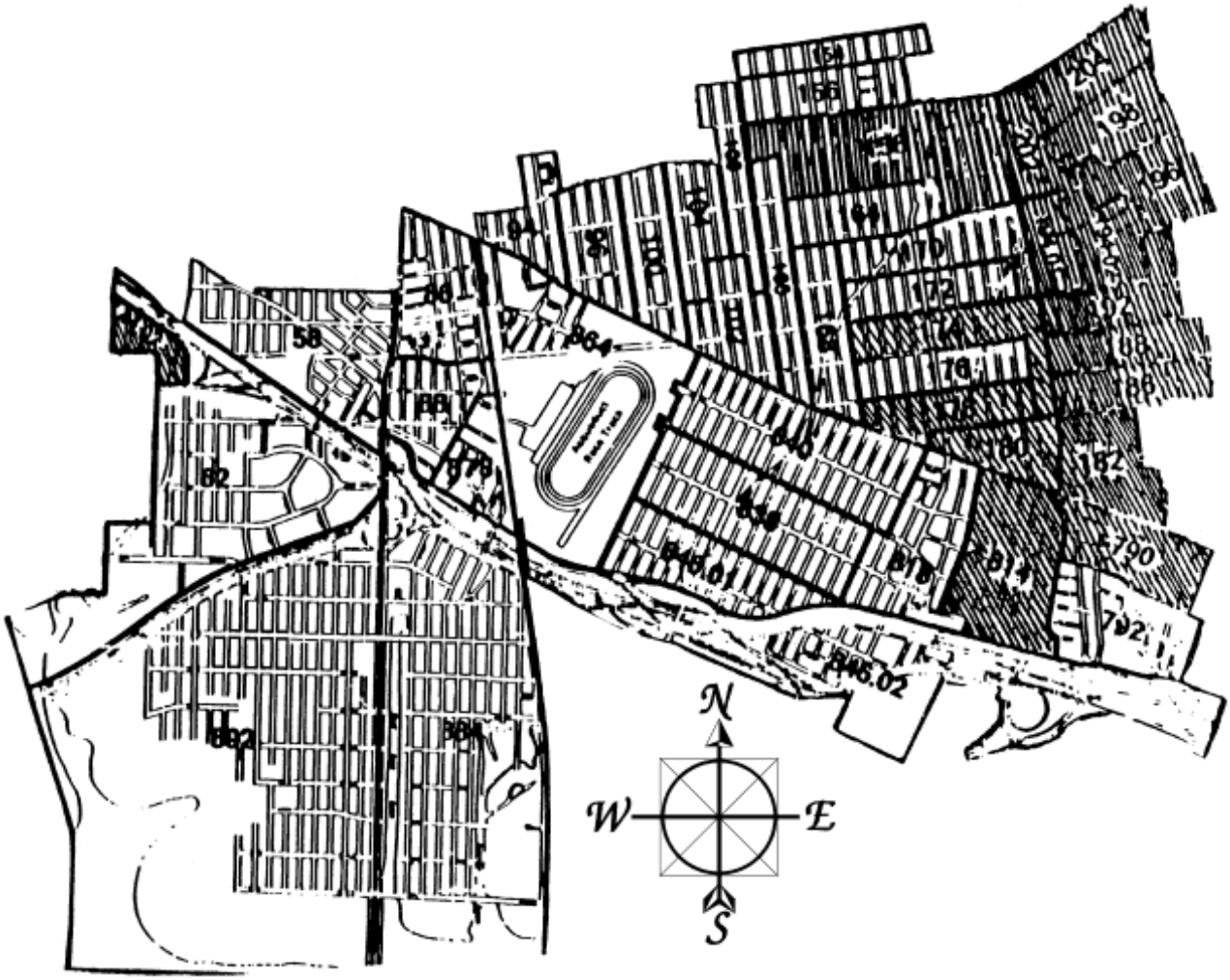
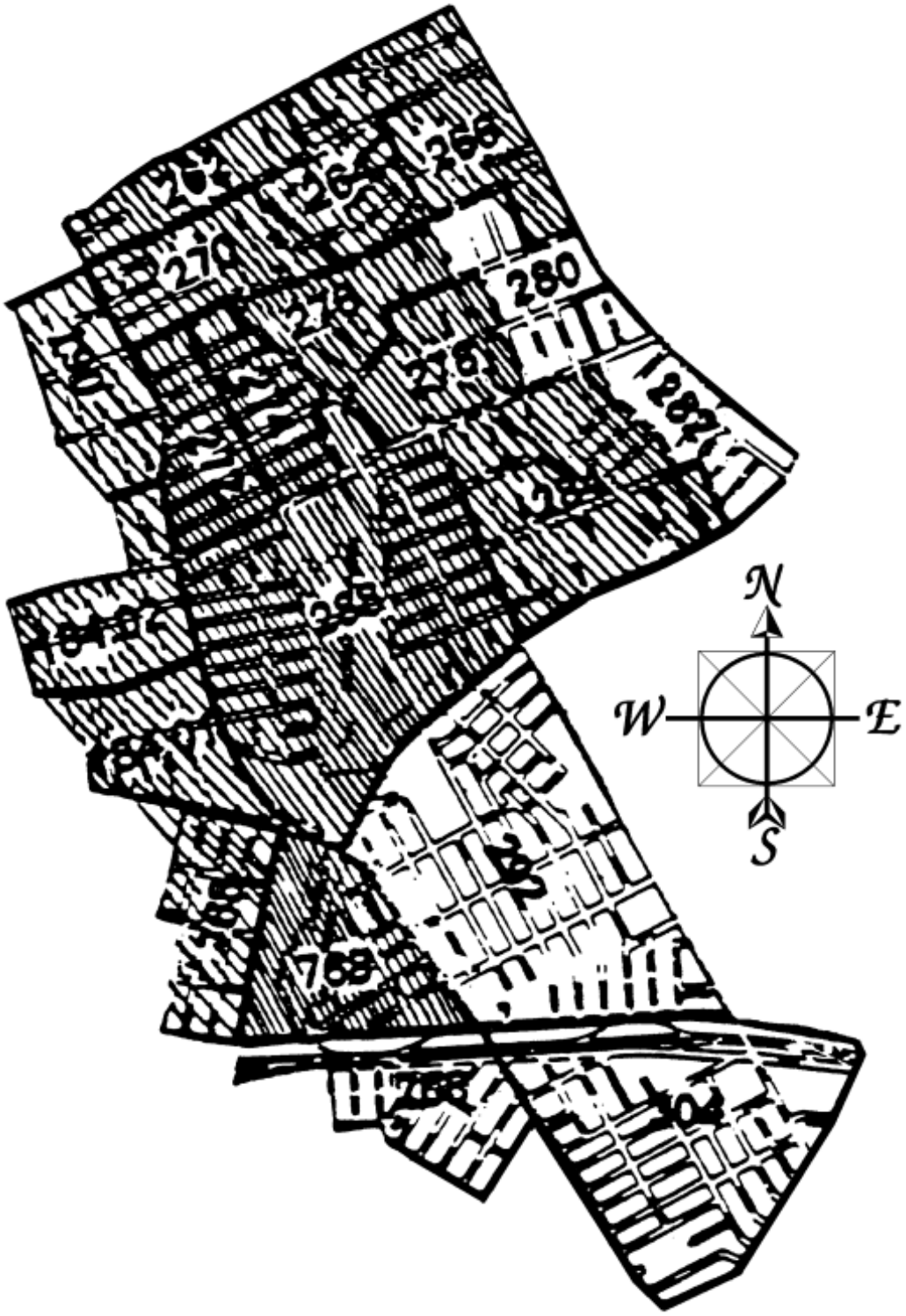
Queens Economic Development 11 of 17



Queens Economic Development 12 of 17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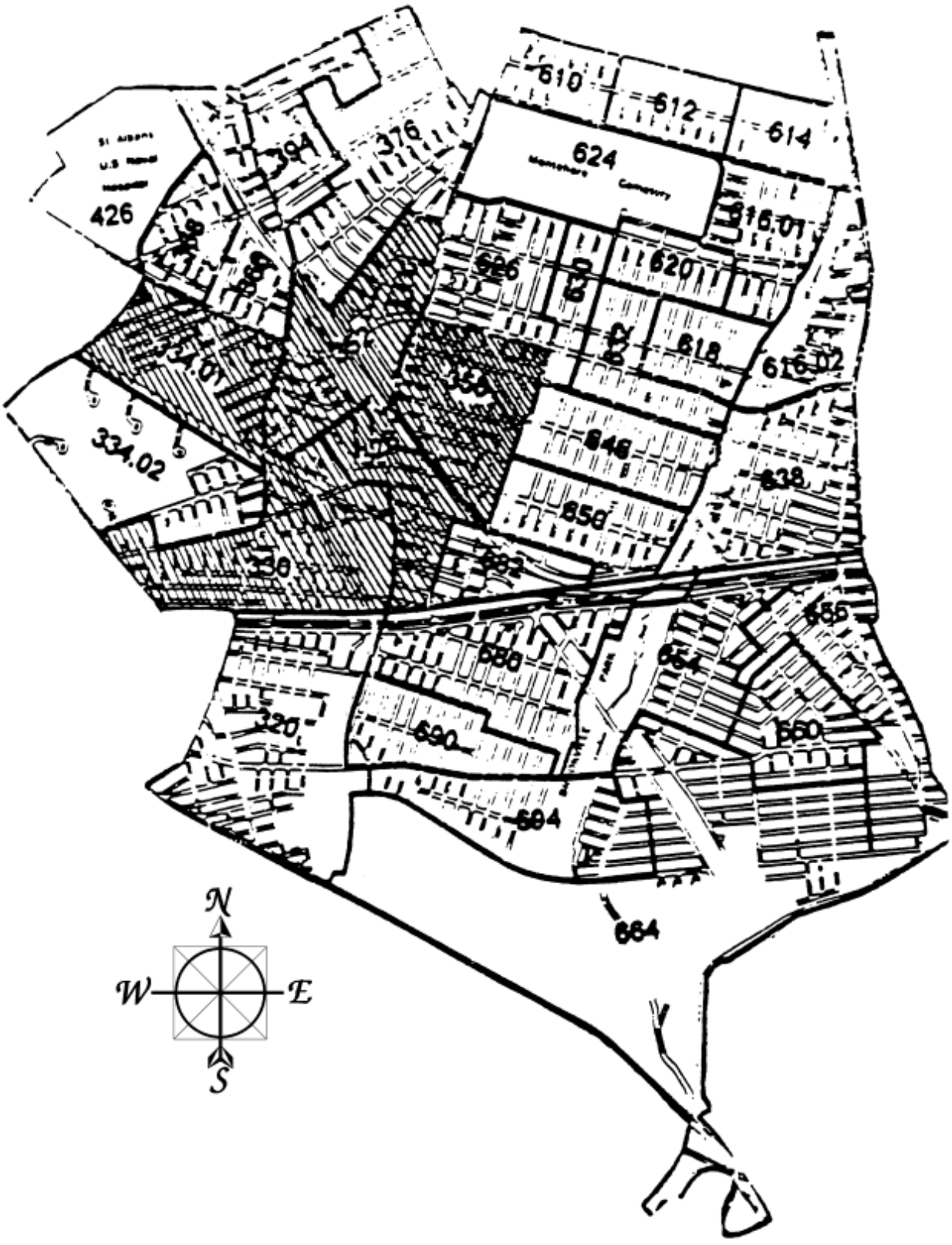
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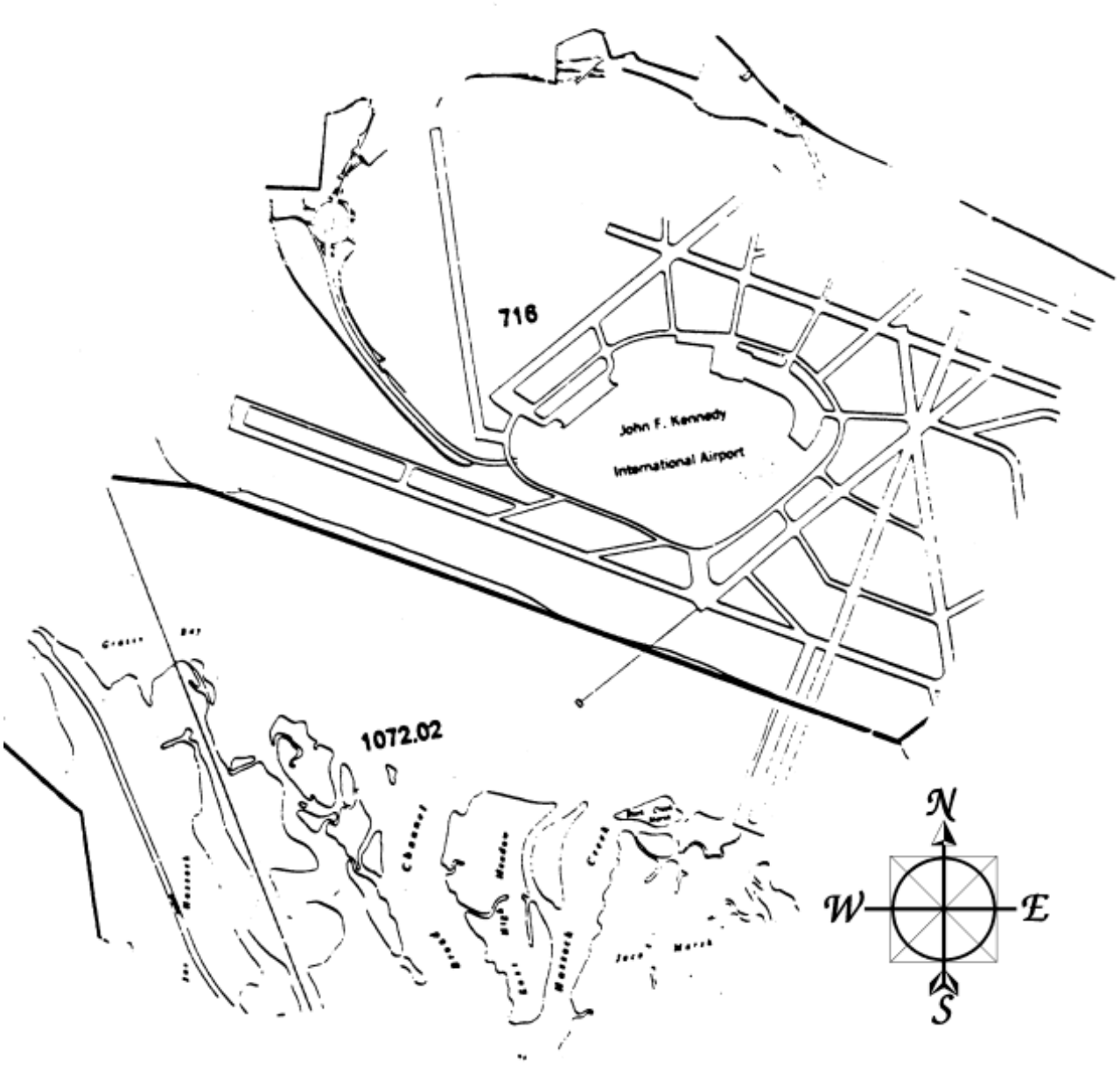
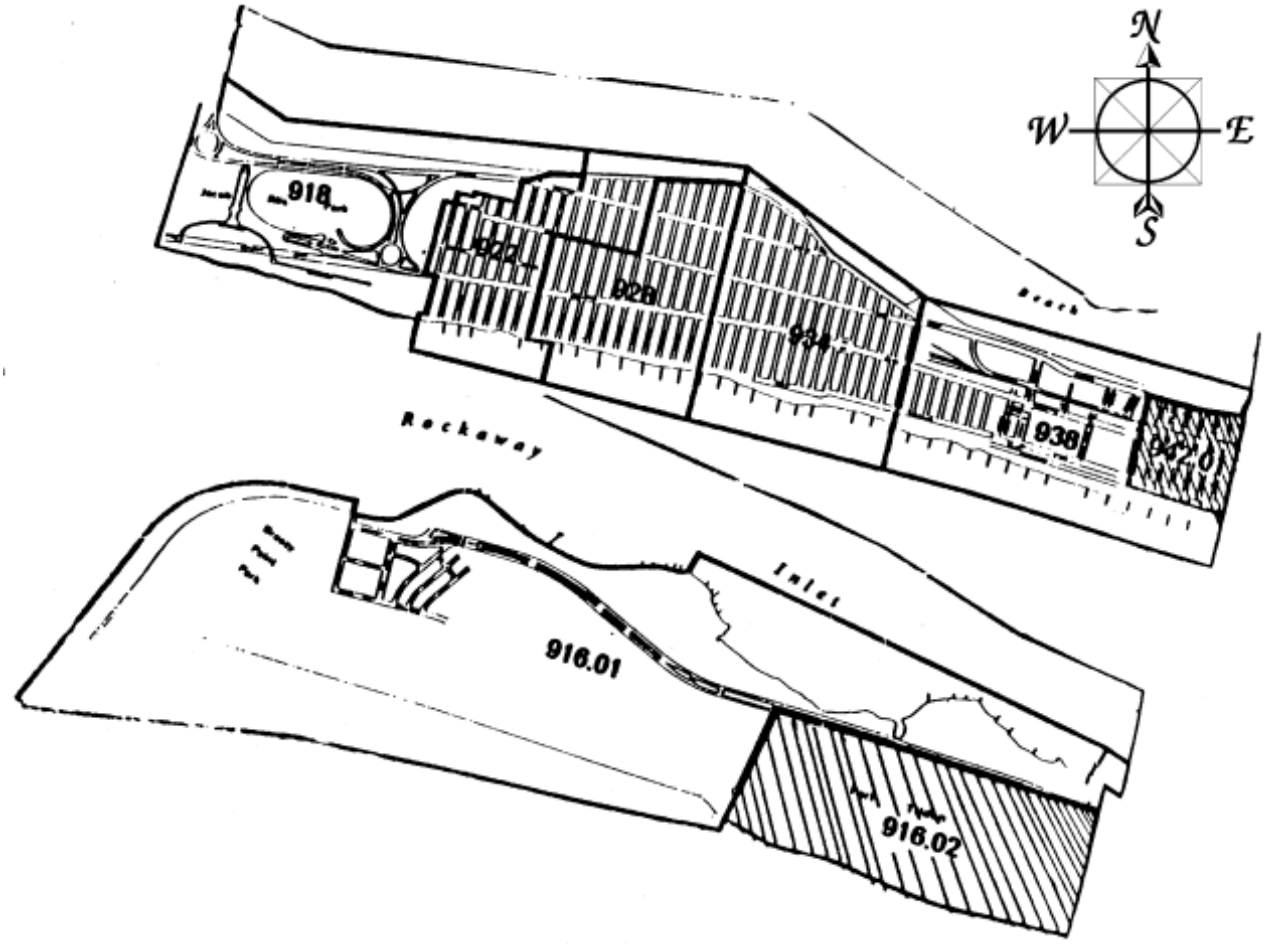
Queens Economic Development 14 of 17



Queens Economic Development 15 of 17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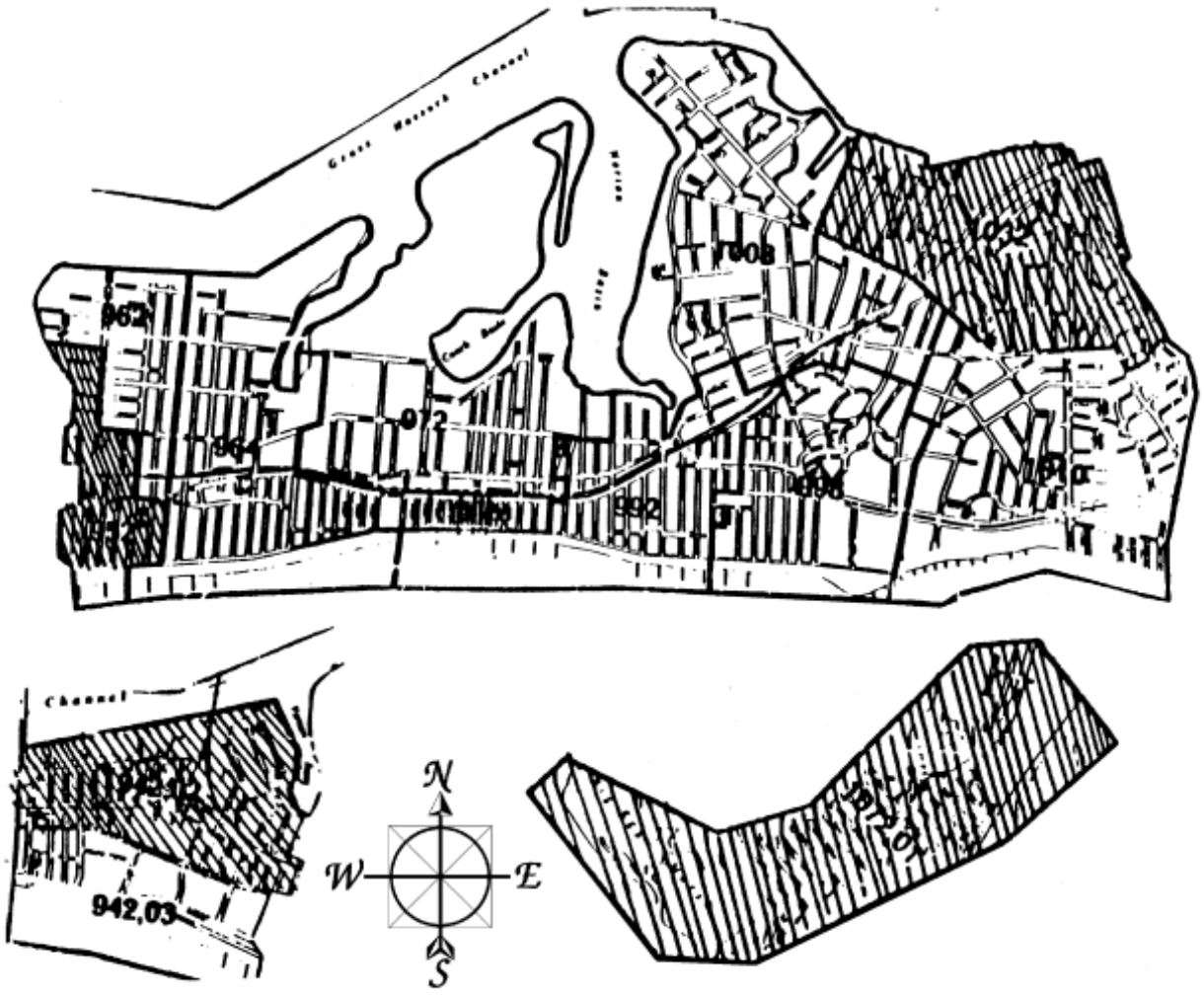
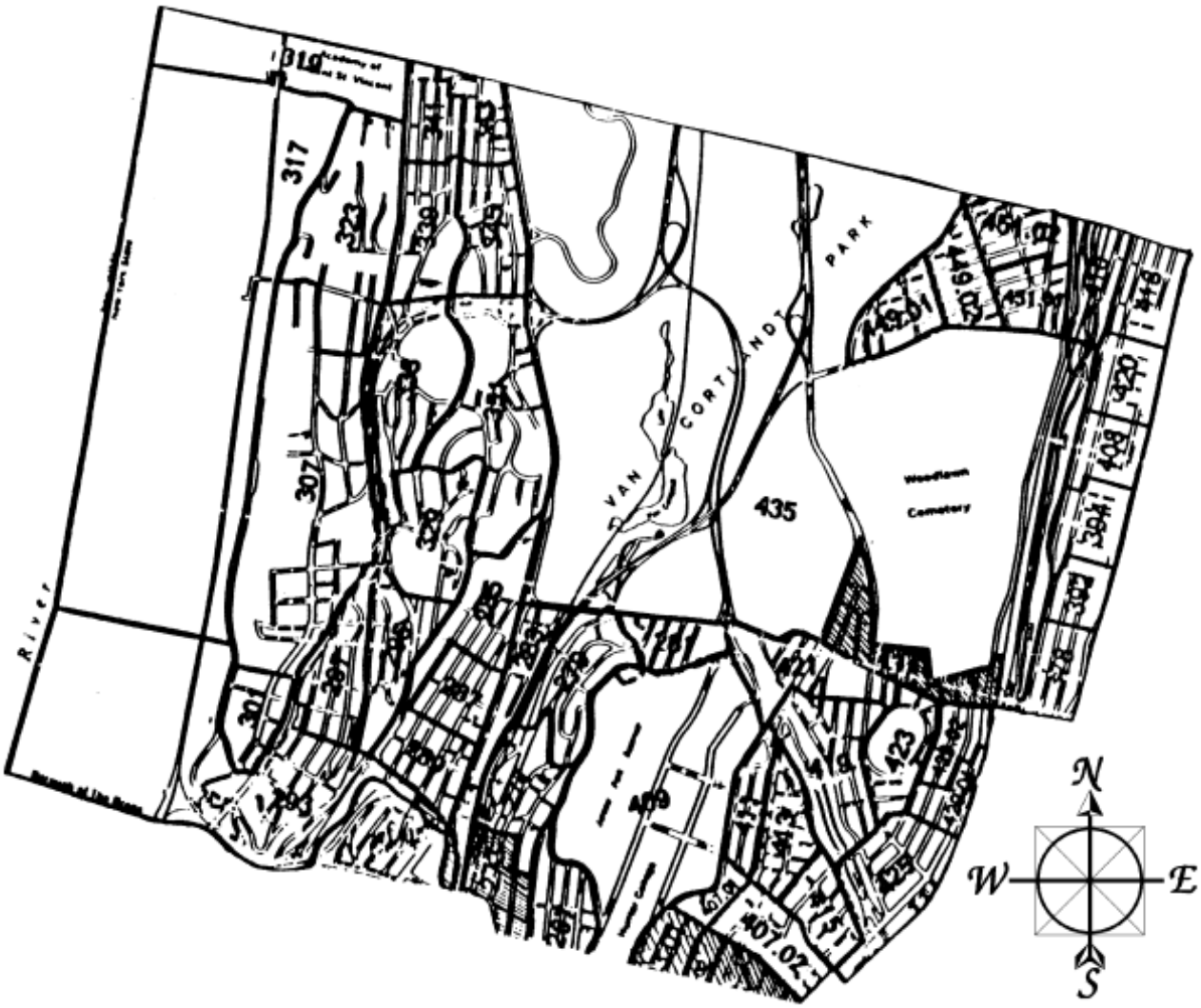


Queens Economic Development 17 of 17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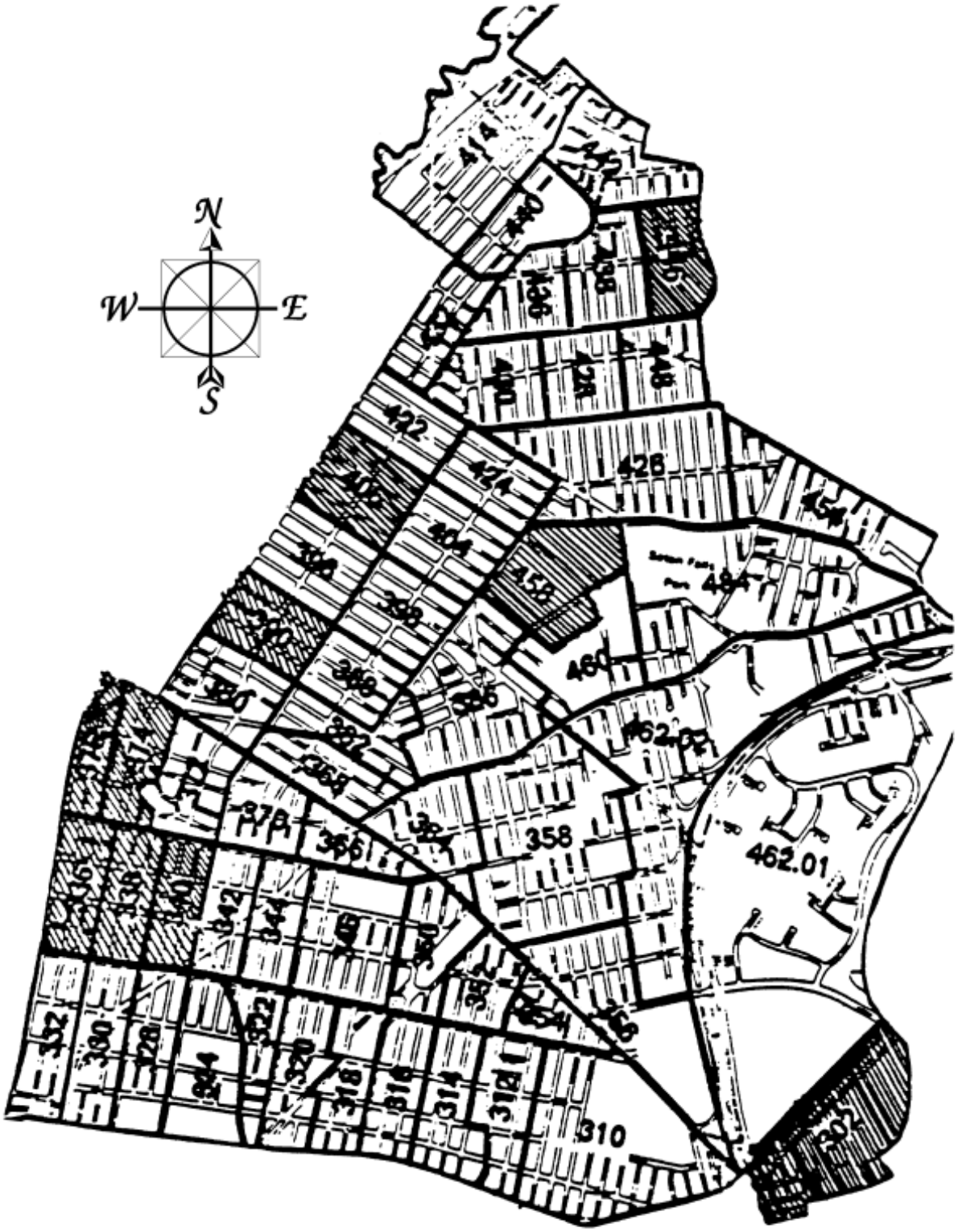
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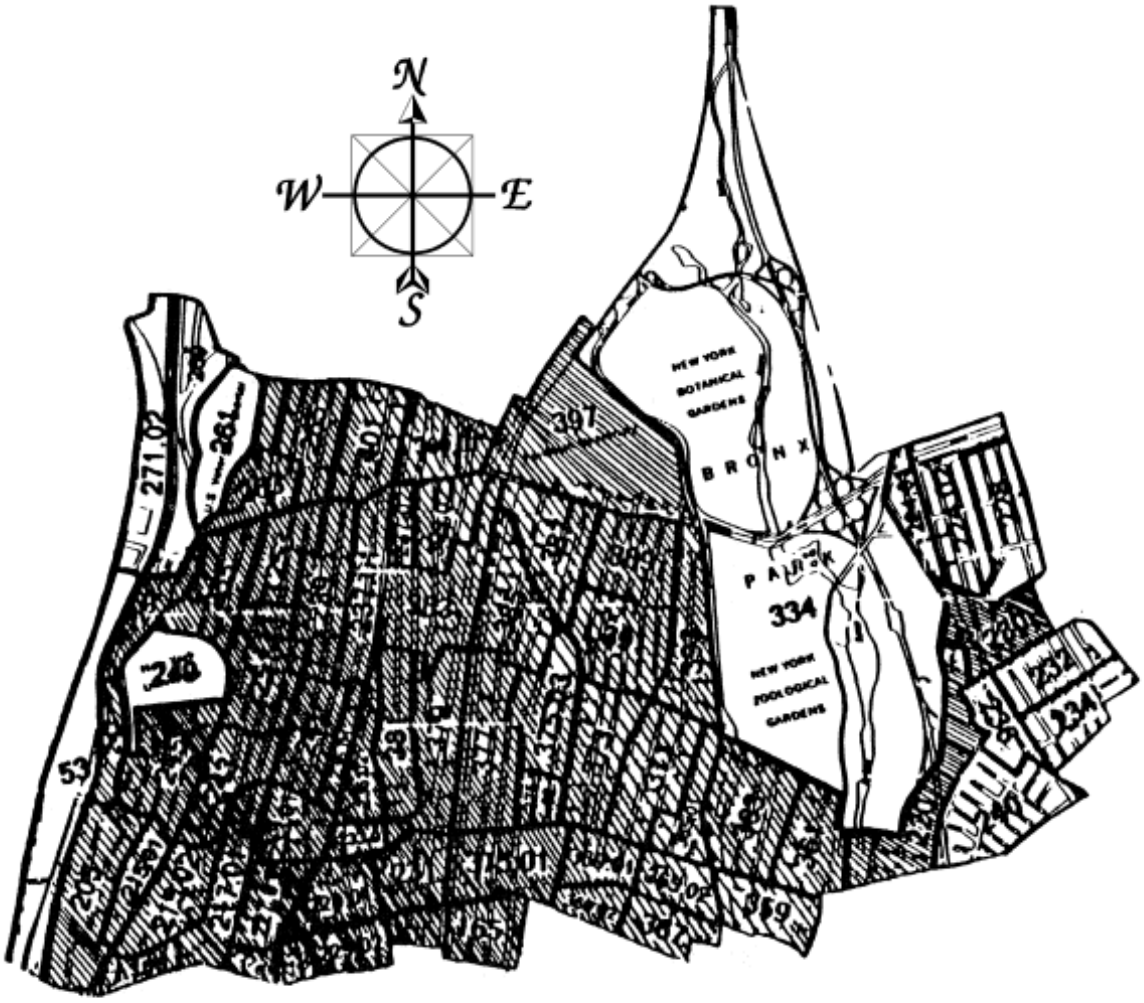
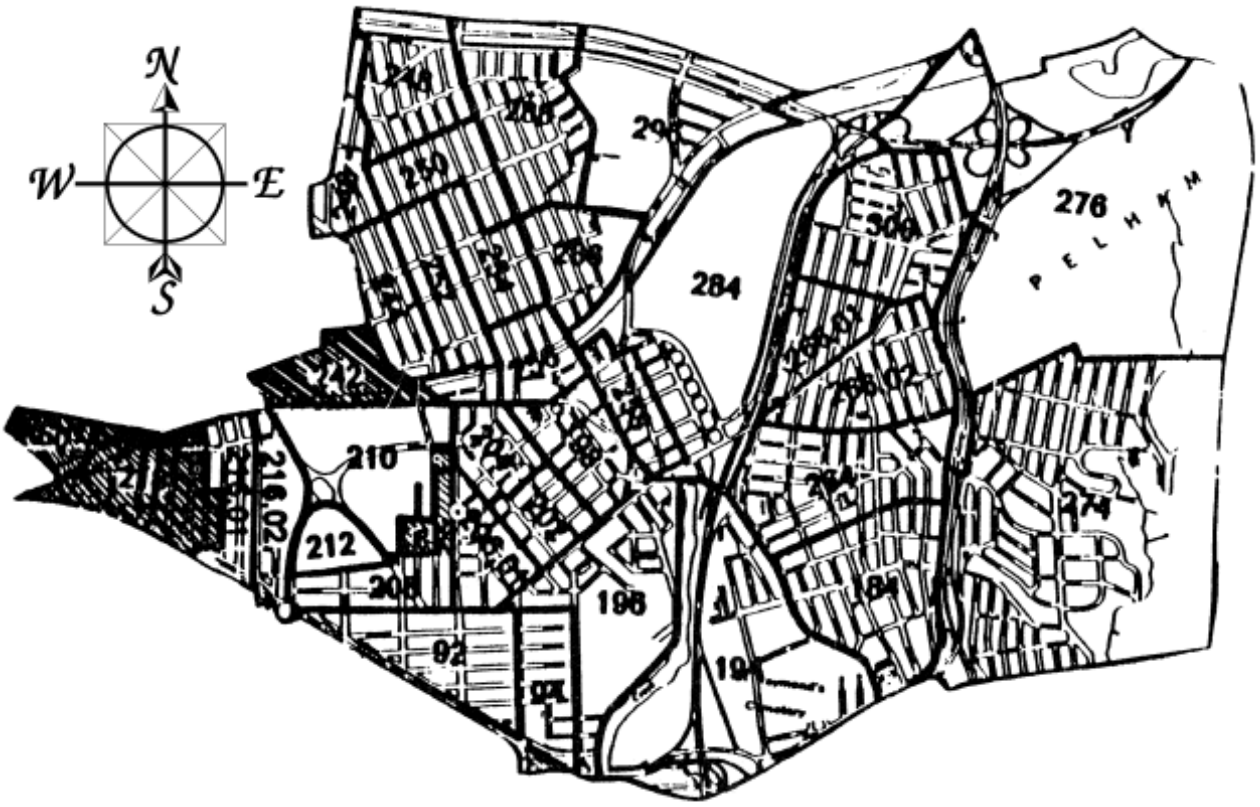
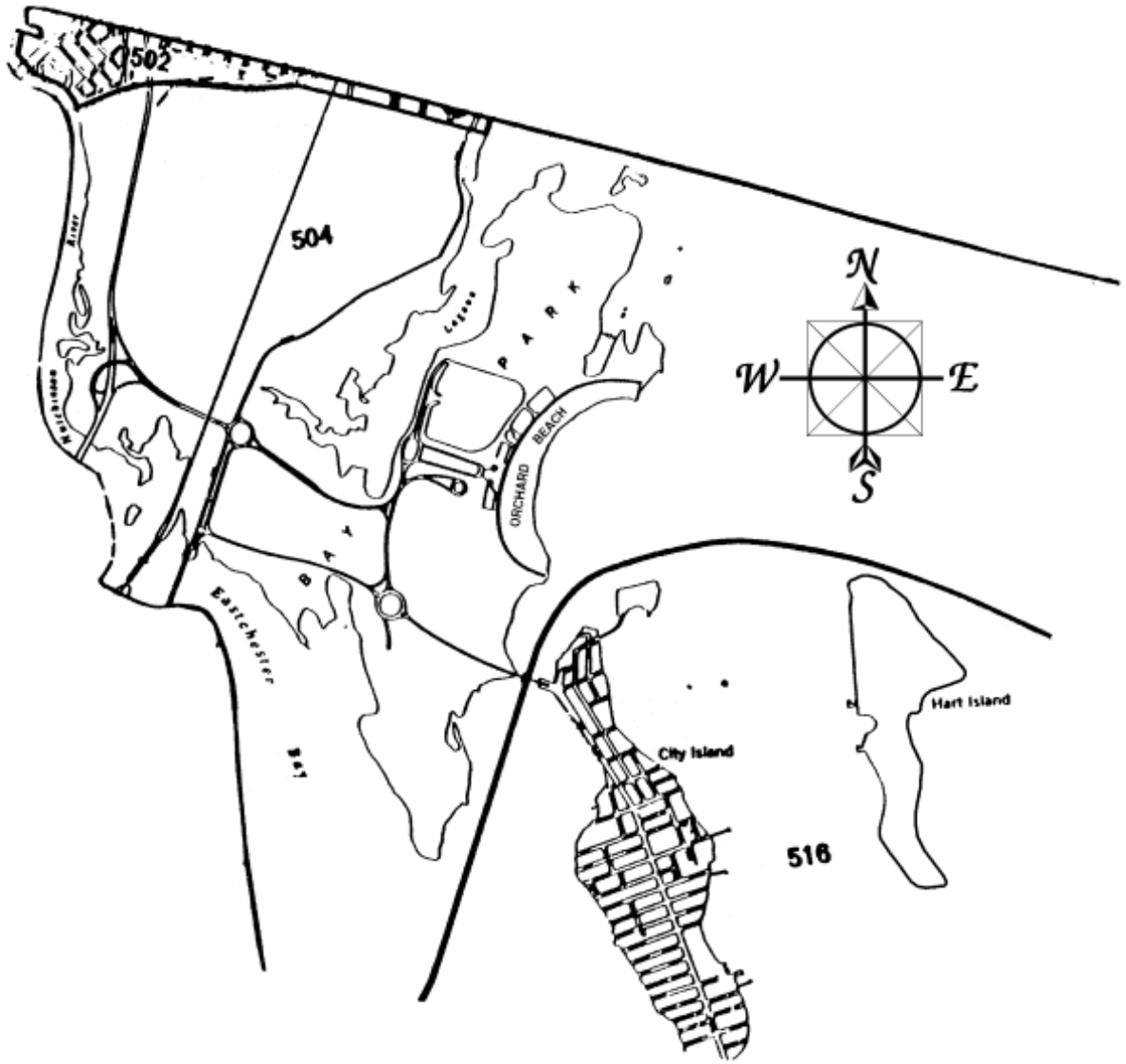
Bronx Economic Development 2 of 8



Bronx Economic Development 3 of 8



Bronx Economic Development 4 of 8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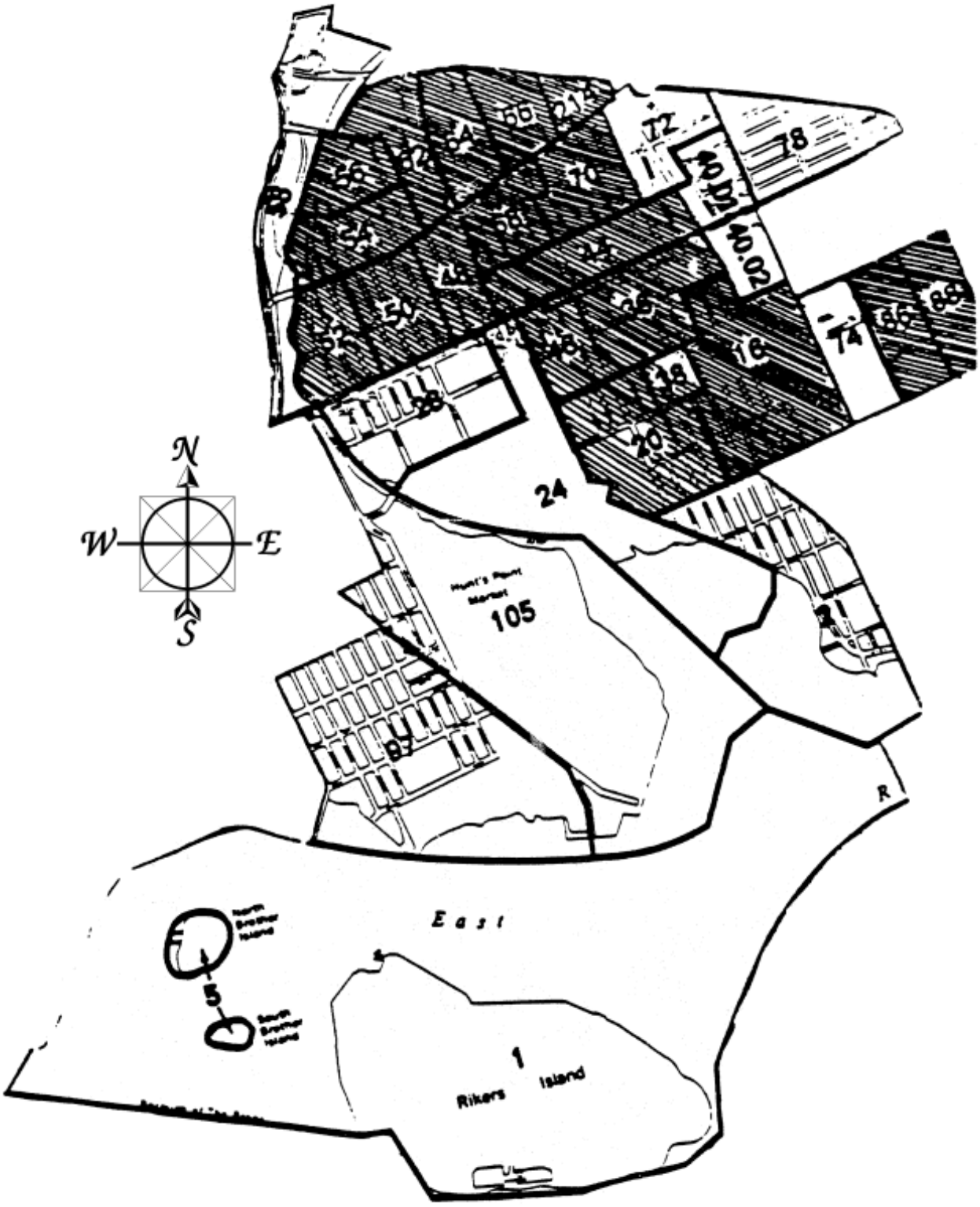
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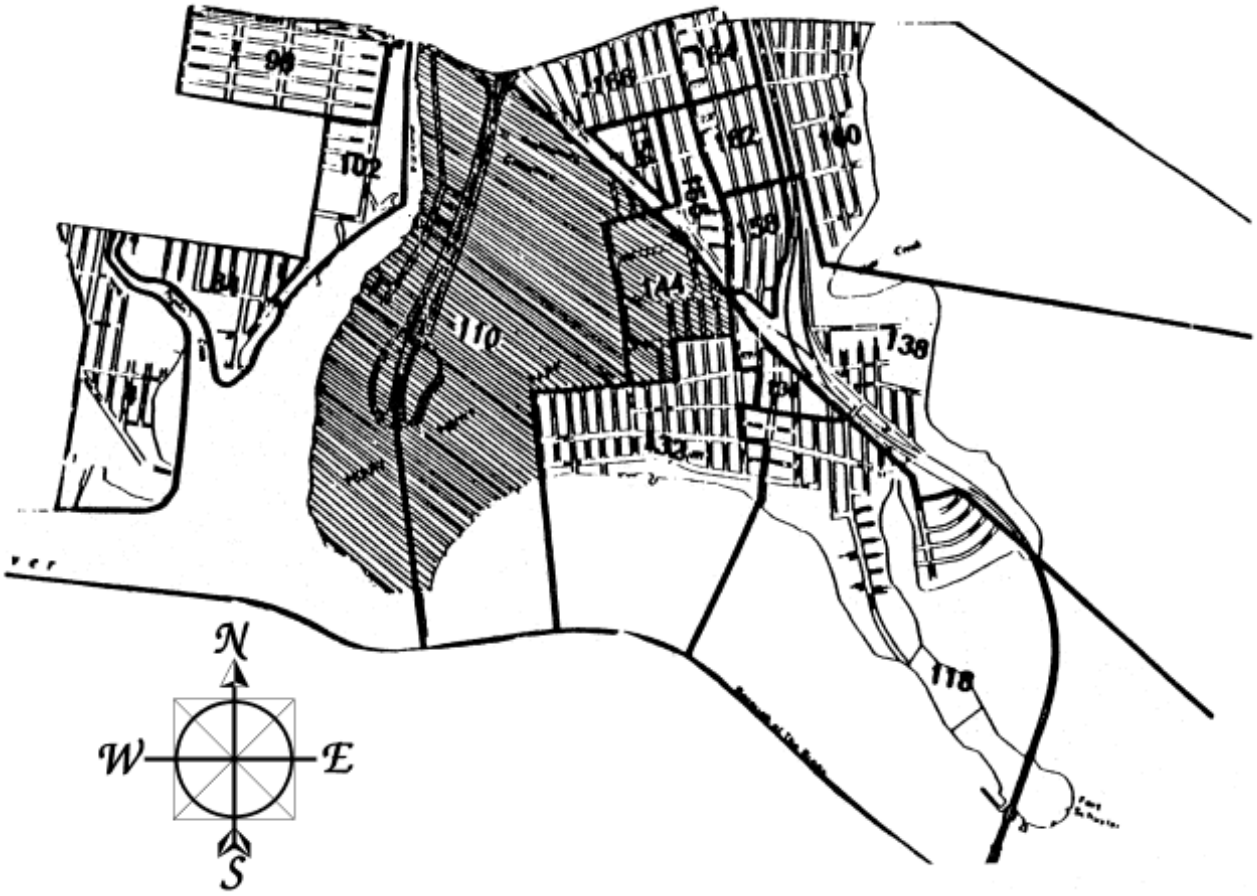
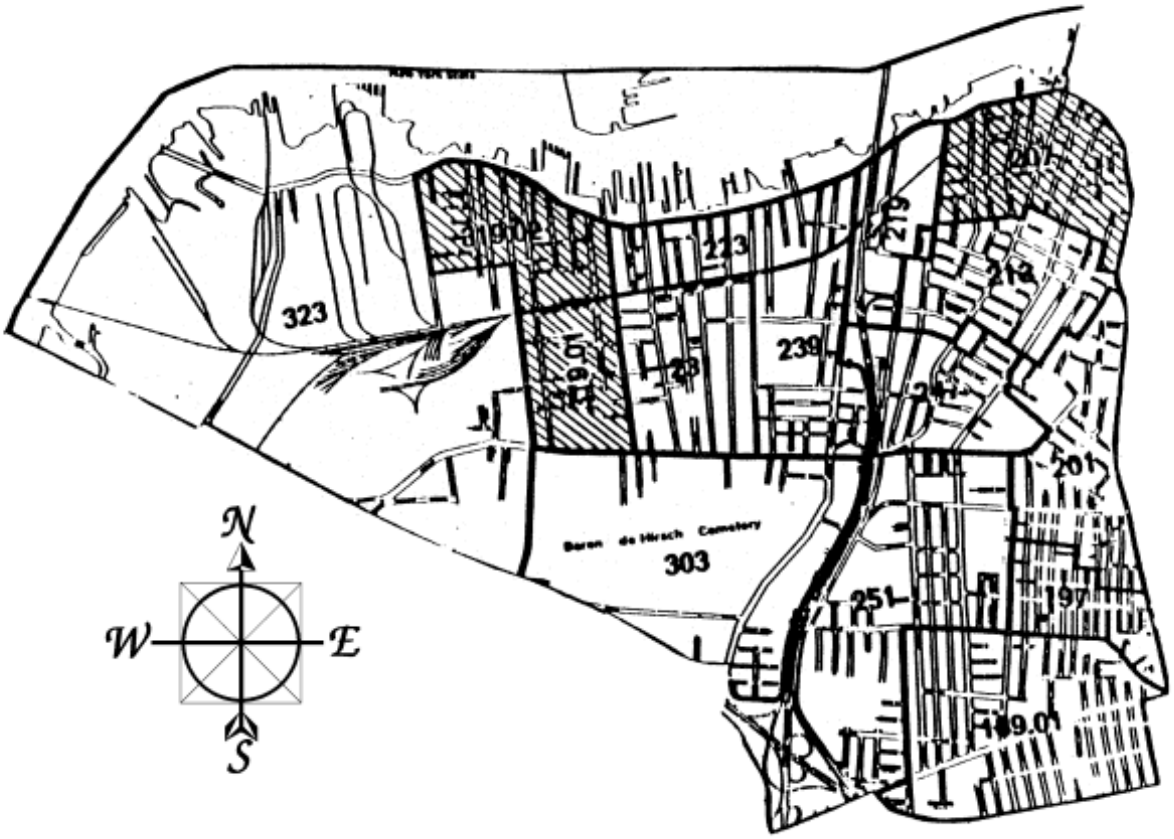
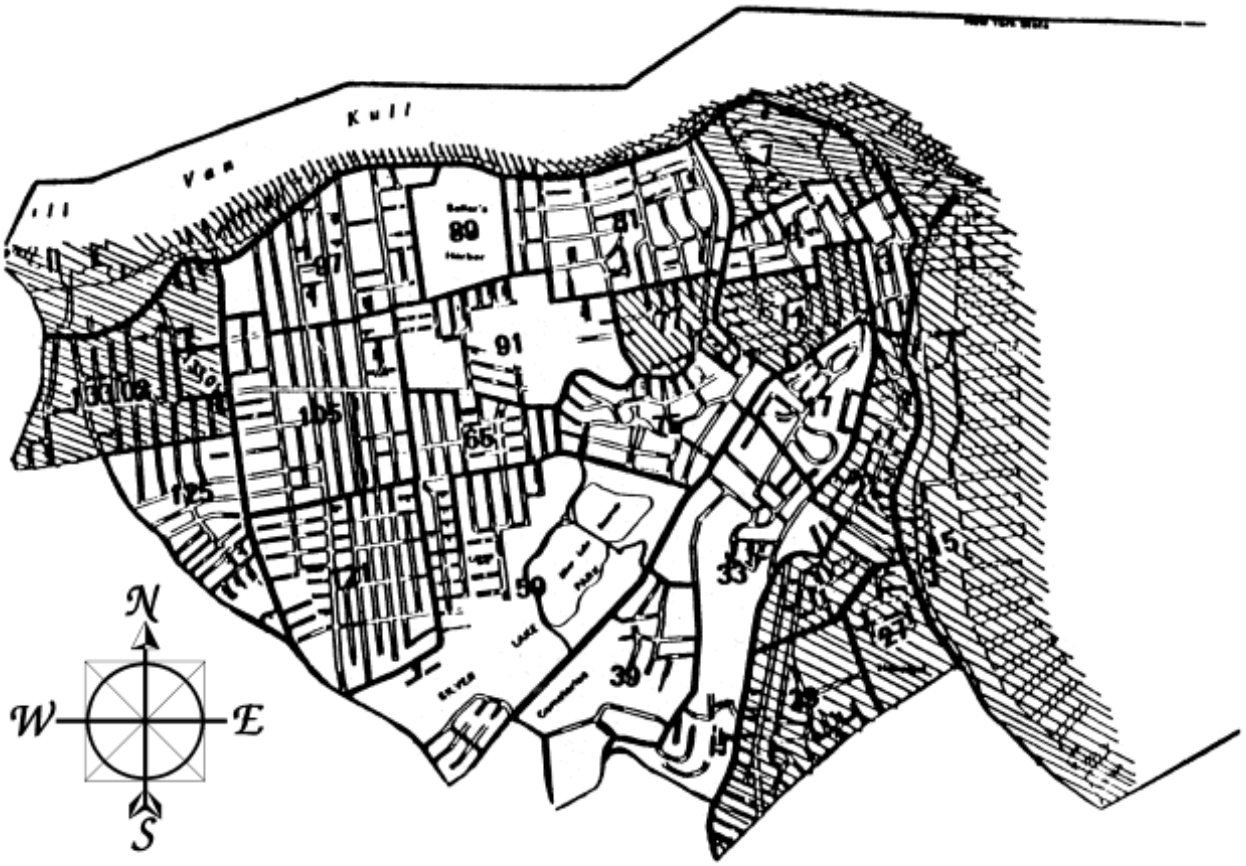
Bronx Economic Development 7 of 8



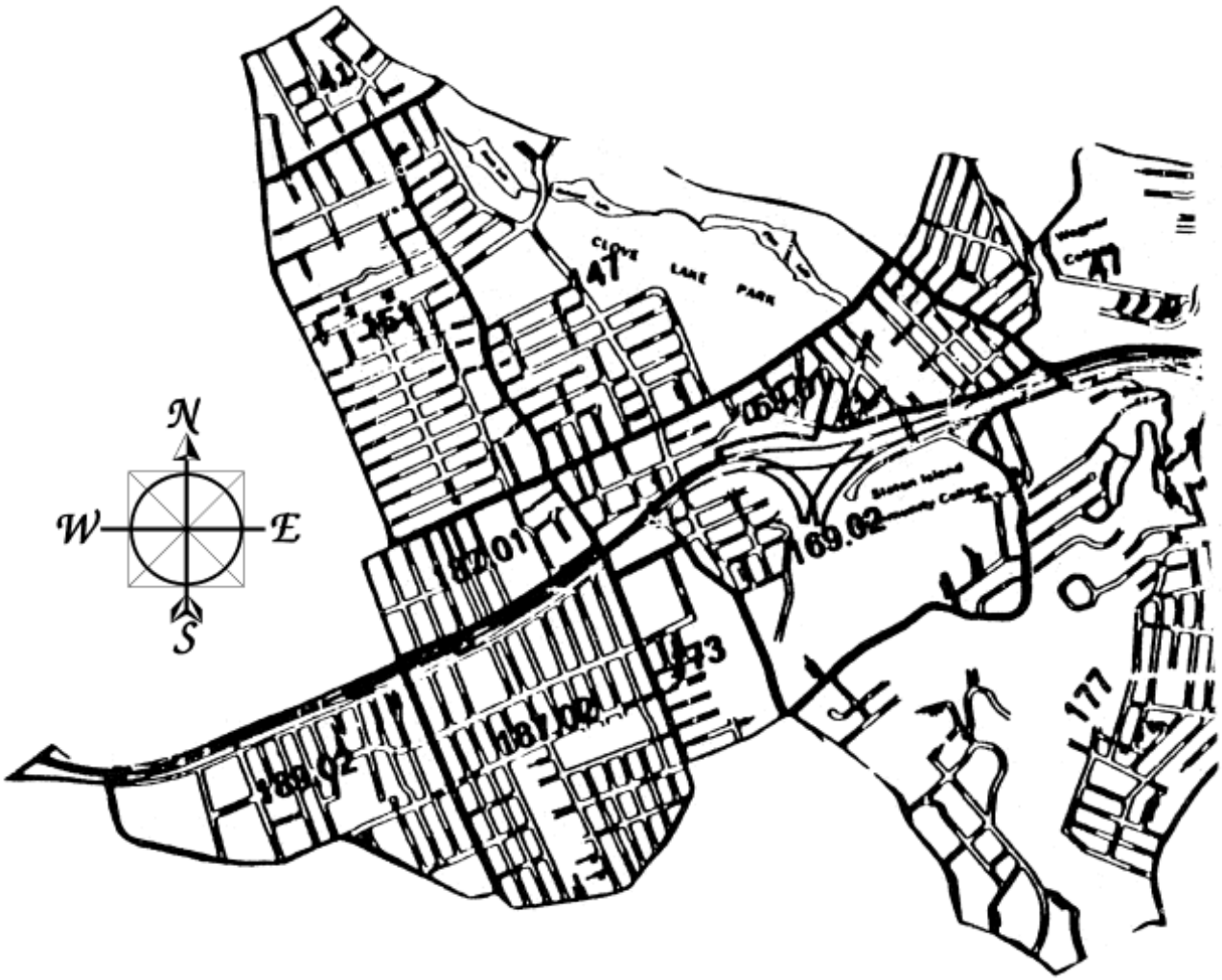
Bronx Economic Development 8 of 8



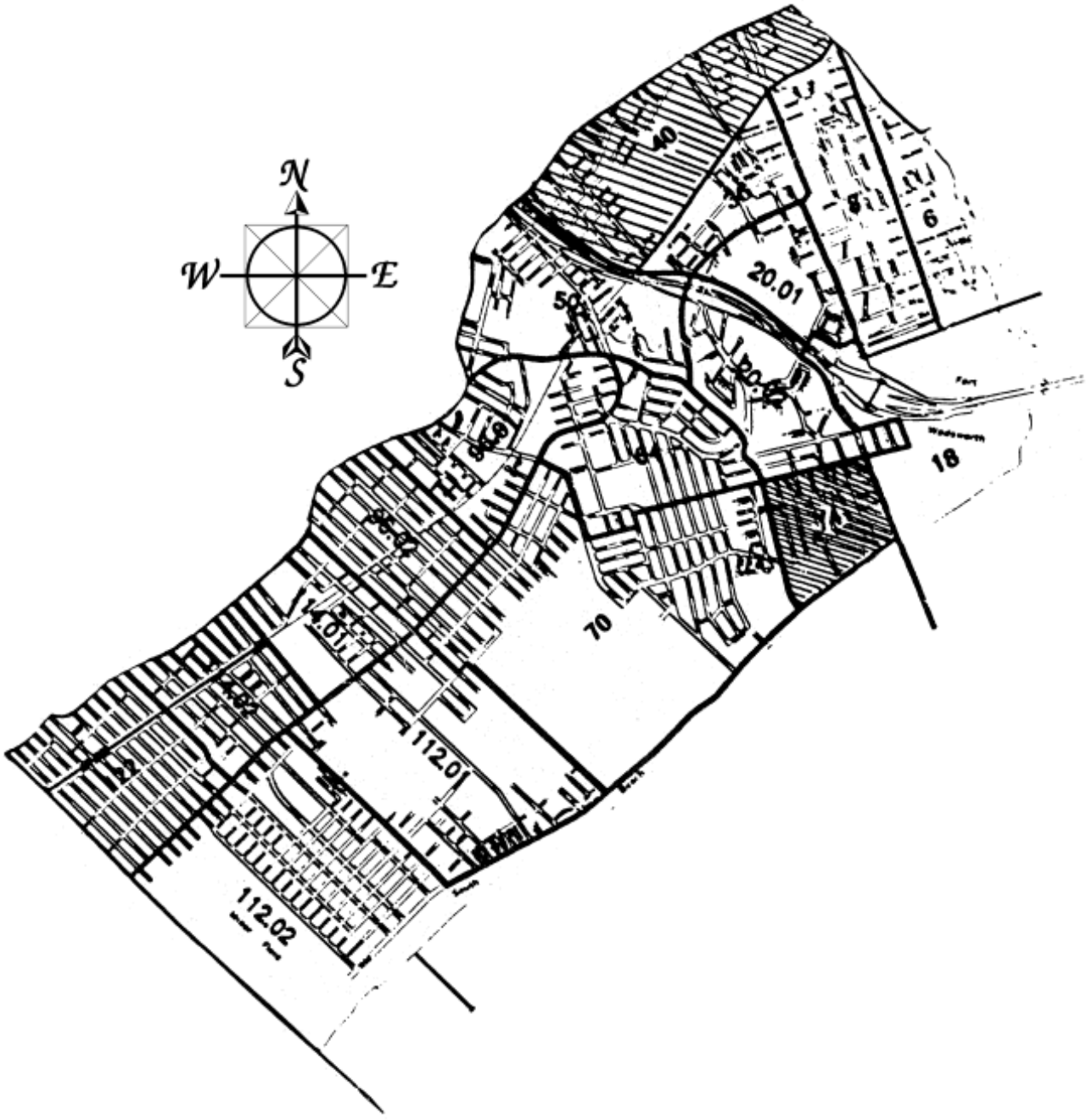
Staten Island 1 of 9



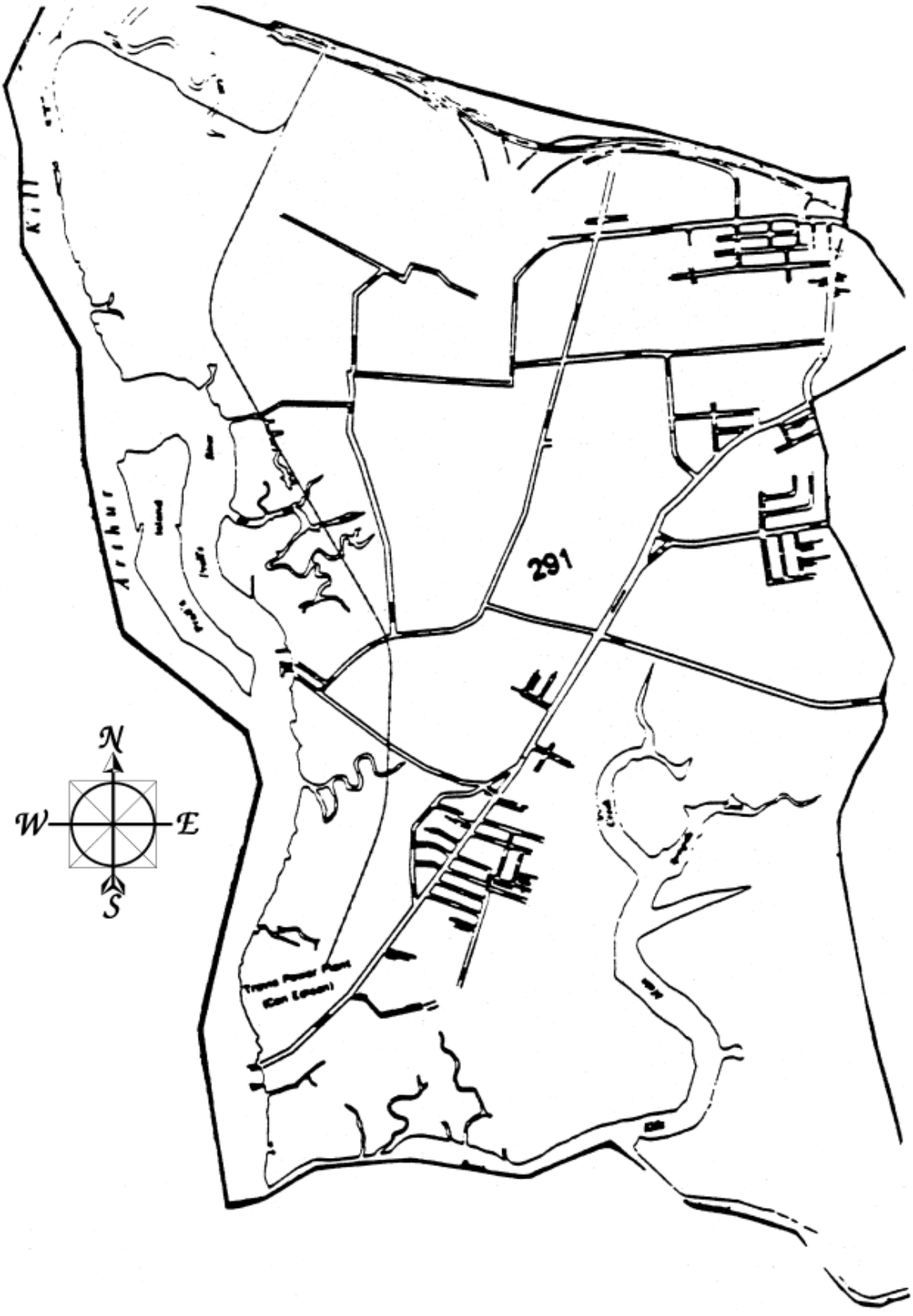
Staten Island 2 of 9



Staten Island 3 of 9



Staten Island 4 of 9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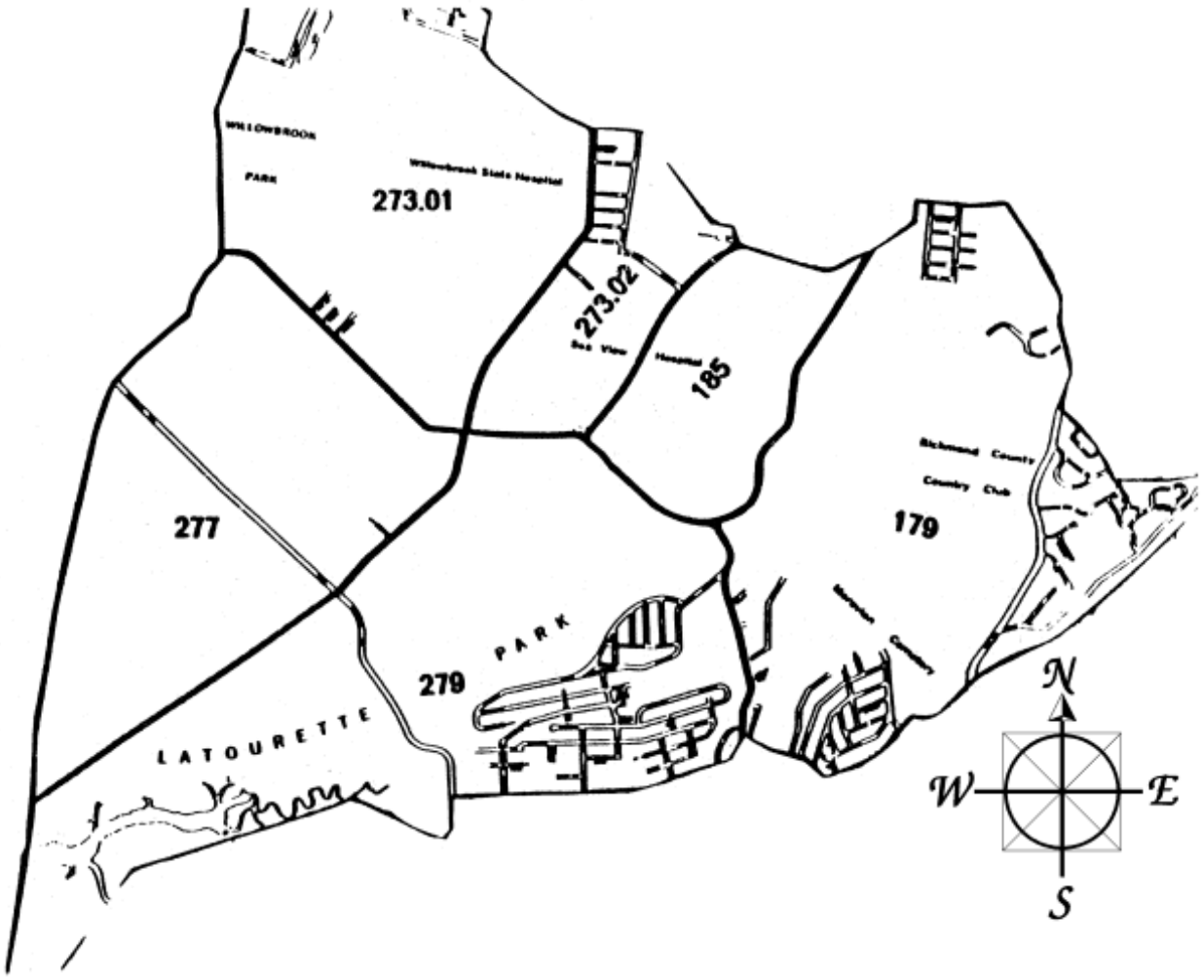
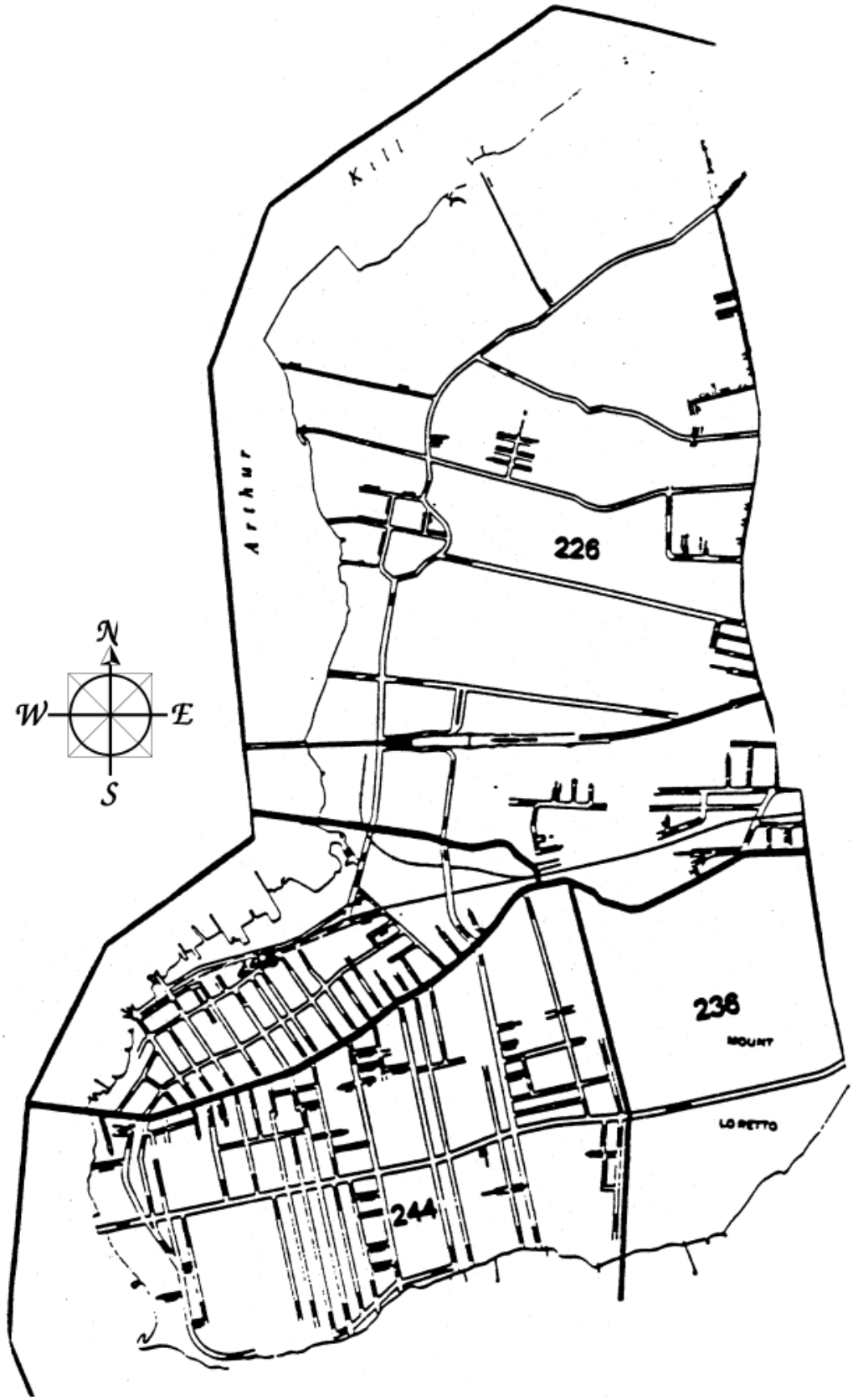
Staten Island 5 of 9



Staten Island 6 of 9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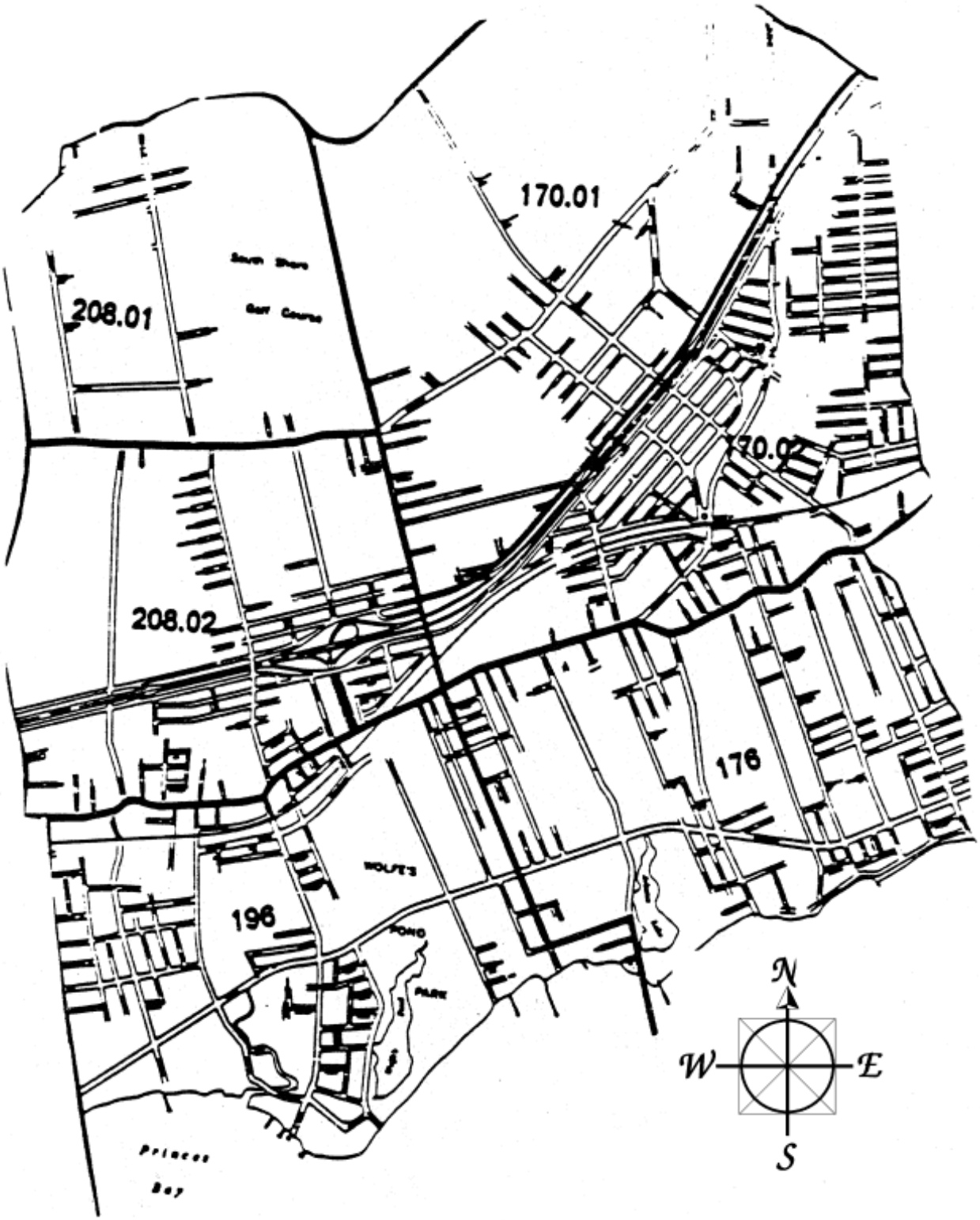
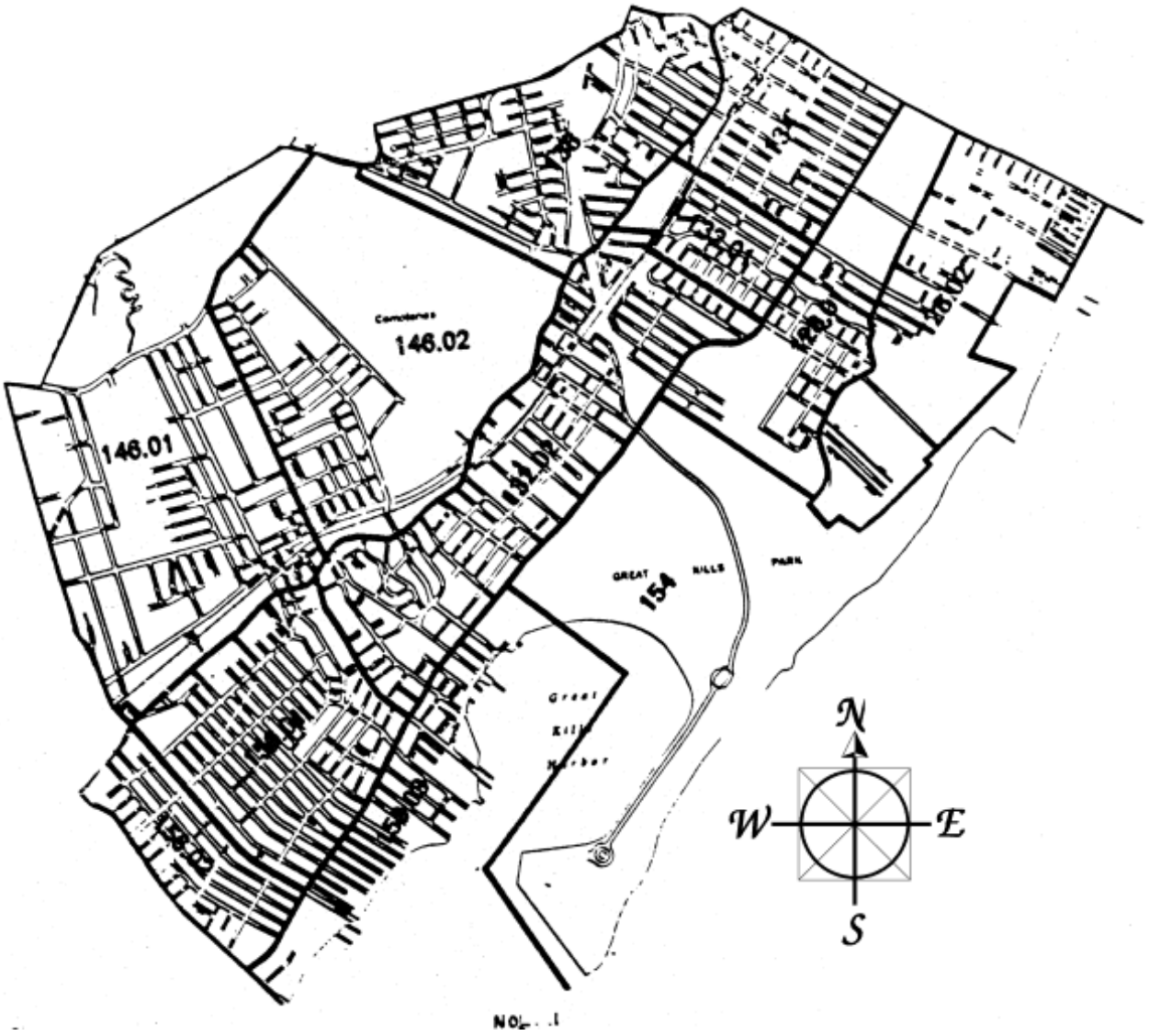
Staten Island 7 of 9



Staten Island 8 of 9



Staten Island 9 of 9

FOOTNOTES

1

[Footnote 1]: * Appendix redesignated by Law Department per Charter §1045(b) due to the consolidation of offices into the Department of Business Services by LL 61/1991 eff. July 1, 1991. Formerly Title 11, Appendix B to Chapter 1.

Rules of the City of New York

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

66 RCNY 11 - APPENDIX C

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

APPENDIX C*1 1989 LOWER LIVING STANDARD INCOME LEVEL TABLE

APPENDIX C*1 1989 LOWER LIVING STANDARD INCOME LEVEL TABLE

Family Size	Non- Metropolitan Areas1	Metropolitan Areas2	Buffalo MSA3	New York City MSA4
1	5,160	5,250	4,780	5,410
2	8,450	8,600	7,870	8,870
3	11,610	11,800	10,750	12,180
4	14,330	14,570	13,270	15,040
5	16,910	17,190	15,660	17,750
65	19,780	20,110	18,310	20,760

1 Non-Metro SDAs:	Clinton-Essex-Franklin-Hamilton; St. Lawrence, Jefferson-Lewis; Ulster; Sullivan; Chenango-Delaware-Otsego; Cayuga-Cortland-Tomkinsa;Allegheny-Cattaraugus-Chautauqua
2 Metro SDAs:	Albany-Rensselaer-Schenectady; Columbia-Greene; Saratoga-Warren-Washington; Fulton- Montgomery-Schoharie; Oneida-Herkimer-Madison; Oswego; City of Syracuse; Balance of Onondaga; Broome-Tioga-Tompkinsa; Chemung-Schuyler-Steuben; Ontario-Wayne-Seneca-Yates; Genesee-Livingston-Orleans-Wyoming; Monroe
3 Buffalo MSA SDAs:	Erie; Niagara
4 NYC MSA SDAs:	Hempstead-Long Beach; Oyster Bay; Suffolk; New York City; City of Yonkers, Balance of Westchester; Rockland; Dutchess-Putnam; Orange
5	For families larger than six persons, an amount equal to the difference between the six and the five person family income levels should be added to the six person family in-

come level for each additional in the family.

Note: UDSOL Has Indicated That These Tables Are Only Valid for the Purpose of Determining Eligibility for Applicable JTPA and TJTC Programs.

Effective: May 4, 1989

a Effective July 1, 1989, Tompkins will merge with Broome-Tioga to form the Broome-Tioga-Tompkins SDA. Until June 30, 1989, Tompkins must use the non-metro area income guidelines. As of July 1, 1989, the metro income guidelines are to be used by Tompkins intake staff.

1989 POVERTY INCOME GUIDELINES

Size of Family Unit	Poverty Guidelines
1	$ 5,980
2	$ 8,020
3	$10,060
4	$12,100
5	$14,140
6	$16,180
7	$18,220
8	$20,260

For family units with more than 8 members, add $2,040 for each additional member.

Effective Date: February 16, 1989

FOOTNOTES

1

[Footnote 1]: * Formerly Title 11, Appendix C to Chapter 1.

Rules of the City of New York

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

66 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 66 Department of Business Services

CHAPTER 12 ADJUDICATIONS

§12-01 Adjudications of the Department of Business Services.

New York City Department of Business Services adjudications regarding the fitness and discipline of department employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section renumbered formerly Title 65, §1-01 LL 61/1991 eff. July 1, 1991.

Section in original publication July 1, 1991.

1 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-01 Definitions.

(a) "Commissioner" shall mean the Commissioner of the Department of Telecommunications and Energy.

(b) "Crosswalks" shall mean the cable television network of the City of New York.

(c) "Department" shall mean the Department of Telecommunications and Energy of the City of New York.

(d) "Production and Editing Facilities and Services" shall mean all facilities and services available for use by or under the control of Crosswalks as set forth in Chapter 3.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

2 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-02 Payment of Fees for Use of Production and Editing Facilities and Services.

Fees shall be paid directly to Crosswalks in accordance with the rate schedule set forth in §3-03.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

3 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-03 Schedule of Rates for Use of Production and Editing Facilities and Services.

Studio Facilities:

30 x 50 studio includes 3 Hitachi industrial grade color cameras, M II video record capability, Grass Valley 200 switcher with chroma key, Dubner character generator, lighting facilities and TAC Bullet audio board with 28 inputs and 4 submasters.

Studio Productions:	Rates
One Production	
Half day (4 hours or less)	$150.00
Full day (more than 4 hours)	$225.00
PSAs (per hour)	$ 75.00
Overtime (per hour)	$ 20.00
2-6 Productions-per production	
Half day (4 hours or less)	$135.00
Full day (more than 4 hours)	$205.00
PSAs (per hour)	$ 70.00
Overtime (per hour)	$ 20.00
Over 6 Productions-per production	
Half day (4 hours or less)	$125.00

Full day (more than 4 hours)	$190.00

Studio Productions **(continued)**

PSAs (per hour)	$ 65.00
Overtime (per hour)	$ 20.00
Studio Audience (set up and break-down)	$ 25.00
Telephone (live call-in)	$ 25.00

Field Production System

Using Complete Hi-8 field package(s) Crosswalks has the capability of producing one-camera or two-camera remote productions.

Remote Productions

One Camera Production

One Production

Half day (4 hours or less)	$175.00
Full day (more than 4 hours)	$300.00
Overtime (per hour)	$ 20.00

2-6 Productions-per production

Half day (4 hours or less)	$140.00
Full day (more than 4 hours)	$240.00
Overtime (per hour)	$ 20.00

Over 6 Productions-per production

Half day (4 hours or less)	$115.00
Full day (more than 4 hours)	$200.00
Overtime (per hour)	$ 20.00

Two Cameras

One Production

Half day (4 hours or less)	$250.00
Full day (more than 4 hours)	$375.00
Overtime (per hour)	$ 40.00

2-6 Productions-per production

Half day (4 hours or less)	$200.00
Full day (more than 4 hours)	$300.00
Overtime (per Hour)	$ 40.00

Over 6 Productions-per production

Half day (4 hours or less)	$165.00
Full day (more than 4 hours)	$250.00
Overtime (per hour)	$ 40.00

Editing/Post production

Off-Line Facilities:

Straight cuts 3/4" system using a Sony 450 editing control system; 3/4" SP editing system with super micron editing controller and video toaster generated titles and transitions. Hi-8 to Hi-8 all-in-one editing system with built-in titling.

Off-Line Editing Services:

	Crosswalks Editor	User Operated
3/4"	$30.00 per hour	$15.00 per hour
Hi-8 to 3/4"	$30.00 per hour	$15.00 per hour
Hi-8 to Hi-8	$30.00 per hour	$15.00 per hour

On-Line Facilities

State-of-the art M II A/B roll facility with full titling and special effects capabilities. A/B roll system utilizing either 3/4" SP or Hi-8 source decks (2 of each) and one 3/4" SP editing deck. Titling and special effects will be provided by the Newtek Video Toaster.

On-Line Editing Services:

M II	$65.00 per hour
3/4" SP	$55.00 per hour
Hi-8 to 3/4" SP	$55.00 per hour

Video Duplication (Crosswalks Tape Stock Only)

Copies of Programs (1/2" VHS, Hi-8 tapes):

30 minutes or less	$ 15.00
30 to 60 minutes	$ 19.00

Copies of Programs (3/4" tapes):

30 minutes or less	$ 19.00
30 to 60 minutes	$ 29.00

Copies of Programs (M II):

30 minutes or less	$ 35.00
30 to 60 minutes	$ 50.00

Screening Facility:

Screening Video Tapes/Logging	$ 5.00 per hour
Screening Video Tapes for Presentation	$15.00 per hour

Special Packages:

A special package consisting of a field shoot, studio, production and editing is available, which cost shall be no greater than the aggregate of the amounts listed in Section 3 for each category of facilities and services.

Cancellation Policy:

Cancellation within forty-eight (48) hours of a scheduled studio or field production will result in a fifty percent (50%) cancellation charge.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

4 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 3 CABLE TELEVISION NETWORK OF THE CITY OF NEW YORK

§3-04 Applicability.

Crosswalks' production and editing facilities and services are available only in connection with programming eligible for cablecast on the city's cable access channels.

HISTORICAL NOTE

Section added City Record Feb. 18, 1993 eff. Mar. 20, 1993.

5 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-01 Definitions.

Authorized agent. "Authorized agent" shall mean any person or entity which is authorized by lease, contract or other agreement to act on behalf of a premises owner with respect to the matters covered by this rule.

Cable television. "Cable television company" shall mean any person, firm, partnership, or corporation which provides one-way transmission to subscribers of video programming or other programming services.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Telecommunications and Energy.

Department. "Department" shall mean the Department of Telecommunications and Energy of the City of New York.

Direct billing. "Direct billing" shall mean a system by which the user is billed directly by the utility for either (1) actual use of electricity, as measured by a properly installed and operating meter or (2) estimated use of electricity, as agreed to by the cable television company and the utility. Direct billing shall include only electrical usage which is independent of the premises owner's metering.

Electricity. "Electricity" shall mean electrical current or service as provided by a utility other than electricity used to operate equipment placed within individual subscriber units for the purpose of receiving cable television service.

Utility. "Utility" shall mean any person, firm, partnership or corporation authorized to provide electricity to

commercial and residential users and subject to the jurisdiction and general supervision of the Public Service Commission of the State of New York.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

6 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-02 Applicability.

(a) This chapter applies to all cable television companies authorized by New York City by means of a franchise or other municipal authorization to construct, operate, maintain, or manage a cable television system in New York City.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

7 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-03 Electricity Usage.

(a) All electricity used by a cable television company shall be directly billed to the cable television company by a utility pursuant to the utility's applicable service tariffs, including all electricity used by a cable television company to operate equipment situated on premises owned, operated or leased by an entity other than the cable company, unless the cable television company and the premises owner have entered into a resale arrangement.

(b) To the extent allowable by applicable law and tariff, a cable television company may enter into a resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television company only upon prior written approval of the affected premises owner or authorized agent.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

8 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 4 ELECTRICAL USAGE BY CABLE TELEVISION COMPANIES

§4-04 Notice.

(a) The cable television company shall give each premises owner or authorized agent not less than fifteen (15) days written notice of its intention to locate equipment upon any premises not owned, operated or leased by the cable television company which may require the use of electricity.

(b) The cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity on premises not owned, operated or leased by the cable television company not less than fifteen (15) days prior to the installation of said equipment.

(c) The cable television company shall notify each affected premises owner or authorized agent when it has completed arrangements for direct billing when the utility providing electricity and the start date for such electricity usage.

(d) For electricity usage to operate equipment owned by the cable television company already situated on premises owned, operated or leased by an entity other than the cable television company as of the effective date of this rule, the cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity to operate such equipment on such premises. The cable television company shall submit a plan for the implementation of the requirements of this chapter for such electricity usage within thirty (30) days of the effective date of this chapter. Such plan shall be subject to the approval of the Commissioner.

(e) The cable television company shall submit to DTE quarterly reports with respect to any resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television

company in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

(f) The cable television company shall submit to DTE summary quarterly reports containing information on each notice sent out pursuant to the requirements of subparagraphs a, b, and c of this section in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

HISTORICAL NOTE

Section added City Record Dec. 1, 1993 eff. Dec. 31, 1993.

9 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-01 Definitions.

Cable System. "Cable System" shall have the meaning set forth at 47 U.S.C. §522.

Basic Service Tier. "Basic Service Tier" shall have the meaning set forth at 47 U.S.C. §543(b)(7).

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

10 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-02 Applicability.

Rates charged by Cable Systems in the City of New York for the Basic Service Tier and associated equipment, installation, services and charges shall be subject to regulation by the City of New York consistent with regulations adopted by the Federal Communications Commission pursuant to 47 U.S.C. §543(b).

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

11 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 5 CABLE TELEVISION RATES

§5-03 Public Hearing.

Rate regulation proceedings pursuant to §5-02 above shall be conducted so as to provide a reasonable opportunity for consideration of the views of interested parties.

HISTORICAL NOTE

Section added City Record Aug. 5, 1993 eff. Sept. 4, 1993.

12 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-01 Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

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

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Information Technology and Telecommunications or any successor agency.

Department. "Department" shall mean the Department of Information Technology and Telecommunications or any successor agency.

Interim Eligible Public Pay Telephone. "Interim Eligible Public Pay Telephone" shall mean a public pay telephone that: (i) was not licensed pursuant to former §§19-131 and 19-128 of the Code; and (ii) was installed and activated prior to March 1, 1996.

Interim Occupancy Fee. "Interim Occupancy Fee" shall mean the annual fee of seventy-five dollars ($75) for each interim eligible public pay telephone listed on a registry.

Owner. "Owner" shall mean a natural person or business entity that owns, leases, or is otherwise responsible for the installation, operation and maintenance of a public pay telephone.

Public Nuisance. "Public Nuisance" shall mean a public pay telephone which the Commissioner has reasonable cause to believe is used on a regular basis in furtherance of unlawful activity.

Public Pay Telephone. "Public Pay Telephone" shall mean a telephone and associated equipment, from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner which is available for use by the public and provides access to the switched telephone network for the purpose of voice or data communications. The term "Public Pay Telephone" shall include any pedestal or telephone bank supporting one or more such telephones, associated enclosures, signage, and other associated equipment.

Public Pay Telephone Installation. A "Public Pay Telephone Installation" shall mean an installation, including the telephone, pedestal and housing of such telephone, with one or more public pay telephones on a pedestal, one or more public pay telephones in an in-line configuration, or a public pay telephone attached to another structure.

Registry. "Registry" shall mean a list submitted by an owner of interim eligible public pay telephones identifying each such telephone.

Street. "Street" shall have the meaning ascribed thereto in subdivision thirteen of §1-112 of the Code.

Substantial Common Ownership. "Substantial Common Ownership" shall mean that:

(i) one or more chains of business entities (a business entity shall include but not be limited to corporations, partnerships or limited liability companies) are connected through stock ownership with a common parent business entity, and the common parent business entity owns at least 50 percent (50%) of the total value of shares of all classes of stock in at least one of the other business entities, or stock possessing at least 50 percent (50%) of the combined voting power of all classes of stock in each of the business entities is owned by one or more of the other business entities; or

(ii) two or more business entities are owned by 5 or fewer persons who are individuals, estates or trusts, and those persons own at least 50 percent (50%) of the total value of shares of all classes of stock in all of the business entities, or stock possessing at least 50 percent (50%) of the combined voting power of all classes of stock in all of the business entities; or

(iii) there are three or more business entities, each of which is a member of a group of business entities described in subparagraph (i) or (ii), and one of which is a common parent business entity included in a group of business entities described in subparagraph (i) and subparagraph (ii).

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Public Pay Telephone Installation amended City Record Feb. 16, 2006 §1, eff. Mar. 18, 2006. [See

T67 §6-02 Note 2]

Substantial Common Ownership amended City Record Feb. 16, 2006 §1, eff. Mar. 18, 2006. [See T67

§6-02 Note 2]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.

3

[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

Rules of the City of New York

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

67 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-02 Penalties.

(a) In addition to the civil penalties provided in subdivisions (c) and (d) of this section, an owner who maintains or operates a public pay telephone without a permit issued pursuant to this chapter, except for an owner all of whose public pay telephones are eligible for, and are in the process of, conversion to permit status under §6-38.1 of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) and imprisonment of not more than thirty days, or both such fine and imprisonment.

(b) Notwithstanding any other provision of this section:

(1) an owner who fails on two occasions within any three month period to provide phone service from a public pay telephone for any period of time exceeding twenty-four continuous hours or who fails to provide coinless twenty-four hour 911 service from such public pay telephone in compliance with the provisions of subdivision (a) or subdivision (b) of §6-05 of this chapter, as the case may be, shall be in violation of such subdivision(s) and shall be liable for a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a violation exceeding twenty-four hours, each day's continuance shall be a separate and distinct occasion in which an offense has occurred. An owner of a public pay telephone shall not be considered to have failed to provide the service required in this subdivision where such owner has posted and maintained a written notification on the public pay telephone within seventy-two hours of the occurrence and provided written notification to the Department, within twenty-four hours, of the occurrence of an

event or a condition beyond his or her control, such as a power failure or an inability of the telephone company to provide access to the switched telephone network, that has rendered such telephone unable to provide such service. However, in the event that service is not restored to the public pay telephone within ninety (90) days of the date the loss of service began, the owner of the public pay telephone shall again be considered to have failed to provide the service required in this subchapter unless the owner temporarily removes the public pay telephone installation and informs the Department of such temporary removal, which may not exceed six (6) months. If the temporary removal exceeds 6 months, the permit or other authorization for the public pay telephone shall be revoked and the public pay telephone must be removed. Notwithstanding the above, if the temporary removal exceeds six (6) months and either: (i) the public pay telephone site is inaccessible to the public; or, (ii) there is litigation pending concerning the failure of the provider to provide service to the subject public pay telephone, the six (6) month period may be extended in three (3) month intervals, subject to approval by DoITT, for each three (3) month extension.

(2) an owner who fails on at least two occasions, each such occasion lasting for a duration of forty-eight (48) hours, or on one occasion that lasts for a duration of seventy-two (72) hours to maintain a public pay telephone in compliance with the provisions of subdivision (c) of §6-05 of this chapter shall be in violation of such subdivision and shall be liable for a civil penalty of not more than one thousand dollars ($1,000) for each such violation.

(c) Notwithstanding any other provision of §6-02, violation of any provision of this chapter, including failure to comply with the requirements of subchapter B of this chapter with regard to an interim eligible public pay telephone, shall be punishable by a civil penalty of not more than one thousand dollars ($1,000) for each such violation, recoverable in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(d) An owner who is liable for a civil penalty for a violation pursuant to subdivision (c) of this section shall also be liable in the amount of the expense, if any, incurred by the city in the rendering inoperable, removal, storage and/or disposal of the public pay telephone and the performance of related repair and restoration work.

(e) An owner who violates any provision of Chapter 4 of Title 23 of the Code, or any term or condition of a permit issued pursuant thereto, or any rule promulgated by the Commissioner pursuant thereto shall be liable for a civil penalty of not more than one thousand dollars ($1,000) for each violation, which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(f) If the Commissioner reasonably believes that an owner, or any employee, agent or independent contractor of such owner, has violated any provision of Chapter 4 of Title 23 of the Code, or any provision of this chapter or any term or condition of a franchise agreement or permit issued pursuant thereto, the Commissioner may, pursuant to §23-408(i)(1)(dd) of the Code, suspend review of all applications for the issuance of permits filed by such owner. Prior to any such suspension, the Commissioner shall notify the owner of the violation or unsatisfactory condition identified by the Commissioner and specify the action that must be taken to correct the condition in such manner and within such period of time as shall be set forth in such notice. Upon receipt of said notice the owner may contest the Commissioner's decision by responding in writing within five (5) business days of receipt of the notification from the Commissioner. A final determination will be made by the Commissioner and the owner will be notified of the determination. If the owner's appeal is rejected, the owner will have five (5) days to correct the specified condition or violation, or said suspension will go into effect. Such suspension may continue until either the Commissioner no longer reasonably believes that a violation has occurred, or the violation has been corrected to the satisfaction of the Commissioner and payment has been made of all fines or civil penalties imposed for the violation, any costs incurred by the City in the rendering inoperable, removal, storage, and/or disposal of the public pay telephone and related repair or restoration work, and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such violation.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Subd. (a) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (b) amended City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) par (1) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2, also note internal renumbering by Law Department per Charter §1045(b)]

Subd. (b) par (1) numbered City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) par (2) added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (b) emergency rule extended until Jan. 17, 1997 (City Record Oct. 25, 1996).

Subd. (b) amended City Record Sept. 23, 1996 eff. Oct. 23, 1996. [See Note 1]

Subd. (d) amended City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (e) added City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

Subd. (f) added City Record Feb. 16, 2006 §2, eff. Mar. 18, 2006. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 23, 1996:

This emergency rule is promulgated pursuant to the authority of the Commissioner of Information Technology and Telecommunications under Sections 1043 and 1072 of the New York City Charter and subdivision b of §23-402 of the Administrative Code of the City of New York. Section 23-408(b) of the Administrative Code sets forth penalties for an owner of a public pay telephone that fails to provide coinless 911 service. This emergency amendment to the present rule authorizes the Department to enforce the requirement for coinless 922 service against all public pay telephones.

Ralph A. Balzano, Commissioner, September 19, 1996

IN COMPLIANCE WITH SECTION 1043(h)(1) OF THE NEW YORK CITY CHARTER and exercising the authority vested in the Commissioner of the Department of Information Technology and Telecommunications by section 1072 of such Charter, I hereby make the following finding of immediate threat to a necessary public service necessary to establish that an emergency rulemaking is required in relation to enforcement of the requirement that public pay telephones provide continuous coinless 911 service.

FINDING OF IMMEDIATE THREAT

The availability of coinless 911 access from public pay telephones is critical to the ability of the City to respond to emergency situations which may endanger the health and safety of citizens. Local Law No. 68 of 1995 recognizes the importance of this service by making failure to provide coinless twenty-four hour 911 service from a public pay telephone a violation punishable by a civil penalty of up to two thousand five hundred dollars for each violation. However, the current rules implementing Local Law No. 68 unnecessarily limit the agency's ability to enforce this provision to telephones that have received permits from the Department. At this time, most public telephones on the streets of the City have not received permits from the Department, but are instead listed on the Department's interim registry or have been previously licensed by the Department of Transportation under former provisions of the

Administrative Code. It is critical that the rules by modified to provide immediate authority to enforce the provisions of Local Law No. 68 against all public pay telephones that do not provide coinless 911 service, regardless of the nature of the authority or permission under which they operate.

It is therefore hereby certified that the immediate effectiveness of a rule enabling the Department to issue notices of violation for failure to provide coinless 911 service against all public pay telephones not providing such service is necessary to address an immediate threat to a necessary public service. This emergency rule will remove language limiting the violation to telephones that have received a permit and will authorize the Department to enforce the requirement for coinless 911 service with regard to all public pay telephones.

2. Statement of Basis and Purpose in City Record Feb. 16, 2006: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. The amendments to Chapter 6 of Title 67 of the Rules of the City of New York proposed above are intended to: clarify the existing rules by fixing typographical, numbering and other technical errors; establish additional requirements for enforcement of service requirements; explicitly provide that a violation of the Chapter 4 of Title 23 of the Administrative Code is a violation of these Rules; empower the Commissioner to suspend the review of applications under certain circumstances; clarify the requirements of coinless 911 service; clarify the maintenance requirements of these Rules; clarify which public pay telephone is covered by an individual permit; clarify when an owner has persistently failed to maintain a public pay telephone installation; clarify when a permit may be transferred; clarify when a permit application fee is not necessary; clarify when a permit may be terminated; clarify the requirements and process for requesting permission to reinstall a public pay telephone installation; clarify the application process; conform to the rules promulgated by the Landmarks Preservation Commission for public pay telephone installations in historic districts; clarify the application review process; clarifying the permit revocation process; clarify the move to the curb process; clarify the process and requirements for public pay telephone installation removal; further explicate criteria for approving sites; clarify the sign requirements; explain the installation and service requirements; and, clarify wiring requirements. Reason proposed rules were not anticipated and included in Regulatory Agenda The Department of Information Technology and Telecommunications' experience in administering the earlier Rules made evident certain shortcomings that needed to be addressed. The enactment of rules by the Landmarks Preservation Commission pertaining to public pay telephones further necessitated amending the Rules of the Department of Information Technology.

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

14 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-03 Liability for Violations.

An owner of a public pay telephone shall be liable for a violation by his or her employee, agent or independent contractor of the provisions of this subchapter made in the course of performing his or her duties.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other

requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

15 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-04 Notice.

Except where otherwise required by law, notice by the Commissioner pursuant to this chapter shall be by first class mail addressed to the address for service submitted in writing to the Department by an owner of a public pay telephone or as set forth in a permit for such telephone. Where an owner has provided a facsimile number with such address or on an application for a permit, notice shall be by facsimile to such number. Notice may also be by such other electronic or non-electronic means as the Commissioner may prescribe. In the case of a public pay telephone that is not identified on a registry or does not possess a permit issued pursuant to this chapter, such notice shall be provided only where the name and address of the owner is shown on the public pay telephone or can be readily identified by the Commissioner by virtue of a trademark prominently displayed on the public telephone. Notice may also be served on a public pay telephone owner by personal service or in any other manner permitted under the terms of a franchise agreement entered into by such public pay telephone owner or in any other manner reasonably calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See Note 2]

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See Note 1]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 1996:

Section 23-403 of the Administrative Code, as added by Local Law Number 68 for the Year 1996, authorizes the Commissioner of Information Technology and Telecommunications to promulgate rules to implement the provisions of that law, including rules on requirements for public pay telephones. These amendments to the Rules are intended to address difficulties encountered in regard to the service of notice on foreign businesses and concerns that have been brought to the attention of the Department regarding the location of public pay telephones, the consistency of siting and other requirements with City policies regarding street furniture, compliance with the American Disabilities Act, and maintenance of, and graffiti on, Interim Registered public pay telephones.

2. Statement of Basis and Purpose in City Record Aug. 17, 1998: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of section 23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. A proposed rule to amend existing rules on this subject was published in **The City Record** on June 26, 1998. The above amendments to Chapter 6 of Title 67 proposed above are intended to: provide that notice may be by electronic means; provide more efficient means for communication between the Department and other relevant City agencies and conform the provisions for notification to Community Boards with the new guidelines established with respect to franchised public pay telephones; and clarify and expand requirements for wiring, siting, and signage required of public pay telephones. A final rule regarding other aspects of the June 26, 1998 proposed rule will be published at a later date.

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify

the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

16 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-05 Maintenance of Public Pay Telephones.

(a) **Coinless 911 service.** A public pay telephone shall provide twenty-four hour access to 911 service without use of a coin or other payment device. For purposes of this subdivision a violation of this requirement may be found where a public pay telephone lacks a dial tone, a clear and audible transmission and reception, a keyboard and handset in working order, or any other feature necessary to provide or obtain access to 911 service (such as, but not limited to, coinless access to an operator services provider).

(b) **Telephone service.**

(1) A public pay telephone shall be installed, operated and maintained in a condition to accept a coin, credit card, prepaid debit card or other appropriate payment device and the telephone must enable a call to be completed when the proper payment has been made;

(2) The return mechanism of a public pay telephone shall be in working order and provide customers with return of coins when calls are not completed;

(3) A public pay telephone shall provide access to operator service without use of a coin or other payment device.

(c) **Cleanliness.** A public pay telephone installation shall be maintained in accordance with the provisions of this

subdivision.

(1) A public pay telephone shall be maintained free of offensive odors, litter, debris and damage.

(2) A public pay telephone shall be maintained free of stickers and graffiti.

(3) A public pay telephone shall be maintained in a clean condition, free of grime and rust and clean to the touch.

(4) All lettering and signage on an installation shall be clean and legible at all times.

(5) All painted surfaces must be repainted at least once per year.

(d) **Safety.**

(1) A public pay telephone installation that has been displaced from its original installation configuration (e.g. motor vehicle collision) must be made safe within 24 hours of displacement and removed or restored to its original position within 72 hours of displacement.

(2) A public pay telephone installation, or any section or component thereof, that becomes broken in place, fractured or otherwise detached must be made safe within twenty-four hours and fully repaired within 72 hours.

(e) **Enforcement.**

(1) A notice of violation may be issued for a violation of a provision of subdivision (a) of this section when inspections on two occasions within a period no shorter than twenty-four hours have disclosed a violation of such provision.

(2) A notice of violation may be issued for violation of subdivision (b) of this section where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days. Each twenty-four hour period in which a failure to provide telephone service continues shall constitute a separate occasion on which an offense has occurred.

(3) A notice of violation for violation of a provision of subdivision (c) of this section may be issued where inspections disclose violation of such subdivision continuing at least forty-eight (48) hours on two separate occasions within a period of ninety (90) calendar days or a violation lasting at least seventy-two (72) hours on one occasion.

(4) A notice of violation for a violation of a provision of subdivision (d) of this section may be issued where two inspections at least seventy-two (72) hours apart disclose that a displaced public pay telephone has not been restored to its original position or that an installation or portion of an installation has been broken in place, fractured, detached or is otherwise unsafe and has not been repaired or made safe.

(5) A violation shall be considered to have continued throughout a period specified in this subdivision when a condition set forth in subdivisions (a), (b), (c) or (d) of this section has been identified upon at least two inspections that encompass such period within one hundred sixty-eight (168) hours; provided that, demonstration by an owner that the condition underlying such violation was corrected within such period shall be a defense to an action pursuant to §6-05.

(f) **Damage to streets.** An owner of a public pay telephone installation shall be responsible for all repairs to streets damaged due to the placement, installation, maintenance or removal of such public pay telephone installation.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §3, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 17, 1996:

Subdivision b of section 23-403 of the Administrative Code of the City of New York authorizes the Commissioner of the Department of Information Technology and Telecommunications to issue regulations governing the operation, cleaning and maintenance of public pay telephones.

The amendment to subdivision b of section 6-02 authorizes the Commissioner, in conformity with the provisions of section 23-408(b) of the Administrative Code, to enforce the requirements for coinless 911 service and other telephone maintenance against all public pay telephone owners. The amendment redefines a repeated failure to provide telephone service for a sustained period as failure to provide telephone service for a duration of twenty-four hours two times within a three month period and specifies that each twenty-four hour period in which telephone service is not provided shall constitute a separate instance in which a violation has occurred. In addition, the amendment provides that an owner shall be liable for a penalty of up to one thousand dollars ($1,000) for failure to clean telephones in accord with section 6-05(c) on two occasions lasting forty-eight hours each or on one occasion lasting seventy-two hours.

The new section 6-05 sets forth specific standards for operability and cleanliness of public pay telephones that applies to all such telephones on, over or under any street or other inalienable property of the City. Subdivision e of section 6-05 provides that the Department may enforce violations of the coinless 911 requirements after inspections that are at least twenty-four hours apart disclose a failure of service that was not restored within a day, and may enforce violations of the cleanliness requirements after inspections have disclosed two violations lasting at least forty-eight hours each or one violation lasting seventy-two hours. The Department has recognized the need to fulfill both its obligation to the public to enforce proper service and maintenance standards and to provide reasonable time for owners to correct violations. An owner will be able to meet the standards of section 6-05 by establishing an internal inspection program by which each phone's operability will be checked, either remotely through industry "smart phones" or daily inspections, and by providing for regular inspections for cleanliness and maintenance within a time frame consistent with the Department inspection cycle set forth in subdivision d.

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

17 of 50 DOCUMENTS

Rules of the City of New York

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

67 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER A**3 GENERAL PROVISIONS

§6-06 Advertisements.

(a) A public pay telephone shall not display advertising material, unless in accordance with the provisions of a franchise. In no event shall advertising material be displayed on a newly erected public pay telephone installation until dial tone service from all public pay telephones installed within such installation has commenced. However, if:

(1) dial tone has not been established by a provider of same within thirty (30) days after the erection of the installation and the emplacement of all public pay telephones to be installed within such installation, and the request of the franchisee to the provider to establish such service; and

(2) said franchisee has provided the Department with (i) proof in a form acceptable to the Commissioner that said franchisee has installed the necessary conduit or duct and completed all necessary steps for ordering dial tone service, (ii) a copy of the Department of Transportation street opening permit for the installation, and (iii) proof in a form acceptable to the Commissioner that the conduit or duct has been properly installed; and

(3) said franchisee has placed and maintained a clear, legible and visible sign, placard or other form of announcement on the enclosure explaining the cause(s) of the failure after thirty (30) days to provide dial tone on any and all pay telephone(s) without dial tone; then

(4) said franchisee may display advertising at such installation unless the Department determines that the

franchisee has acted in bad faith regarding establishing dial tone at the pay telephones in such installation.

(b) Except as otherwise provided in subdivision (a) of this §6-06, in no event shall advertising material be displayed on any public pay telephone installation during any period in excess of the longer of either forty-eight (48) hours or two (2) business days, that a telephone has been removed from within such installation and not replaced by a functioning telephone, or any or all of the telephones with such installation are unable to provide dial tone, unless the franchisee has provided notice to the Department with respect to the circumstances underlying the loss of dial tone such as power failure or the inability of the dial tone provider to provide access to the public switched telephone network. The Department may require advertising material to be removed from said installation if the Commissioner determines that said franchisee could have avoided interruption of dial tone or re-established service within forty-eight (48) hours or two (2) business days.

(c) The display of advertising on any enclosure installed pursuant to a notice to proceed issued after December 4, 2004 shall be prohibited in the following Community Districts of Manhattan: 1, 2, 3, 4, 5, 6, 7, and 8.

(d) In locations where these Rules prohibit the display of advertising, the public pay telephone installation shall be the smallest design currently approved by the Art Commission.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Dec. 17, 1996 eff. Jan. 16, 1997. [See T67 §6-05 Note 1]

Subd. (a) amended City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) amended City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) added City Record Oct. 5, 2004 §1, eff. Dec. 4, 2004 per the Notice of Adoption. [See

Note 1]

Subd. (d) added City Record Feb. 16, 2006 §4, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 5, 2004:

The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones located on, over or under the streets or other inalienable property of the City of New York.

The amendments to Chapter 6 of Title 67 of the Rules of the City of New York are intended to: restrict the display of advertising on public pay telephones in certain areas of Manhattan; increase the fees for the processing of an application for a permit to install, operate and maintain a public pay telephone to cover a larger percentage of the actual costs to the City of processing such application; and establish a fee to process an application for an Extension to a Notice to Proceed to cover the actual costs to the City of processing such an application. The amounts set for fees in the above amendments reflect a percentage of the actual administrative costs incurred by the Department of Information Technology and Telecommunications in issuing the permits in question.

Comments received by DoITT on the proposed amendments are discussed and responded to in the Report referred to above, which is available on DoITT's website at the web address referred to above.

CASE NOTES

¶ 1. Under Admin. Code § 23-403 and City Charter § 1072, the agency had the power to enact regulations restricting advertising on public telephones. Moreover, the regulation does not violate the substantive due process clause of the New York State Constitution, Art. 1, Sec. 6. Coastal Communication Service, Inc. v. New York City Dept. of Information Technology and Communications, 12 Misc.3d 1179(A), 2006 WL 1879115 (Sup.Ct. New York Co.).

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.

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[Footnote 3]: ** Subchapter added City Record January 30, 1996 effective February 29, 1996.

Rules of the City of New York

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

67 RCNY 6-21

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-21 Maintenance and Operation of Interim Eligible Public Pay Telephone Without a Permit.

On and after March 31, 1996, no interim eligible public pay telephone may continue to be operated or maintained on, over or under any street or other inalienable property of the City unless such telephone is in compliance with the provisions of §6-22 of this subchapter, provided that an event described in §6-23 of this subchapter has not occurred. An owner who operates an interim eligible public pay telephone in violation of this section shall be in violation of the permit requirements of §23-402 of the Code and shall be subject to the penalties set forth in subdivisions (a), (c) and (d) of §6-02 of this chapter and removal of such telephone pursuant to §6-26 of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

19 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-22

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-22 Conditions for Maintenance and Operation of Interim Eligible Public Pay Telephone; Registry of Interim Eligible Public Pay Telephones.

An interim eligible public pay telephone may continue to be maintained and operated on or after March 31, 1996 only if (i) the owner has identified such telephone on a registry of public pay telephones and submitted such registry and has paid the interim occupancy fee for such telephone as required by the provisions of §6-24 of this subchapter, and (ii) the Commissioner has not objected to the continued maintenance and operation of such telephone for a reason set forth in subdivision (a) of §6-25 of this subchapter or, if the Commissioner has objected, such objection has been cured or has been withdrawn.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

20 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-23

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-23 Discontinuance of Interim Eligible Public Pay Telephones Identified in Registry.

The continued maintenance and operation of interim eligible public pay telephones identified in a registry of public pay telephones shall no longer be authorized if and when any of the following occurs: (i) the owner has declined to respond to the request for proposals or other solicitation of proposals issued by the Commissioner for the purpose of entering into franchise agreements for the installation, operation and maintenance of public pay telephones within the time period specified in such request for proposals or other solicitation of proposals and sixty days have elapsed following such failure to respond; (ii) the Commissioner has determined not to propose the award of a franchise to such owner to the Franchise and Concession Review Committee and sixty days have elapsed following notification to such owner of the Commissioner's determination; or (iii) the Franchise and Concession Review Committee has determined not to approve a proposed franchise agreement for such owner and sixty days have elapsed following notification to such owner of the Committee's determination. However, such public pay telephone may continue to be maintained and operated if, within any such sixty day period the owner enters into an agreement for the sale of such public pay telephone to another entity that, at the time such agreement is concluded, is either a potential franchisee or has been awarded a franchise, and ownership of such public pay telephone is transferred within ninety days after such agreement is concluded.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §5, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.

4

[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

21 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-24

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-24 Interim Registries.

(a) **Deadline for submission.** (1) An owner of an interim eligible public pay telephone shall submit a registry to the Commissioner at the office of the Department containing a list of all such interim eligible public pay telephones no later than March 15, 1996. An interim eligible public pay telephone not listed in a registry as of March 31, 1996 is in violation of the permit requirements of §23-402 of the Code and §6-20 of this chapter, and the owner thereof shall be subject to the penalties provided therein.

(2) An owner who has failed to submit a registry on or before March 15, 1996, or has failed to submit a complete registry on or before March 31, 1996, and who pays the civil penalties assessed for such violation and a fee of $75 for each telephone for the year ending March 14, 1997, may submit a registry or add to a registry between February 13, 1997 and March 14, 1997. In addition, an annual fee of $75 for each telephone shall be paid for each succeeding year in accordance with the provisions of subdivision (d) of this section.

(3) In no case shall a public pay telephone installed and activated subsequent to March 1, 1996 be included in a registry submitted or updated pursuant to this section. A registry that does not comply with the provisions of this section shall not be accepted by the Commissioner.

(b) **Form and contents.** (1) A registry shall be in the form prescribed by the Commissioner in Appendix A to this subchapter.

(2) A registry shall state:

(i) the name and address of the owner;

(ii) the geographic location of each public telephone identified on the registry and the type of mounting for each such telephone; and

(iii) the date of installation and activation of each public pay telephone identified on the registry, accompanied by documentation of the activation.

(c) **Certification.** A registry shall be accompanied by a notarized certification that the information on the registry is accurate and that each public telephone identified thereon provides (i) continuous twenty-four hour service, (ii) continuous twenty-four hour coinless 911 access and (iii) continuous New York State Public Service Commission approved operator services. Such certification shall be in the form prescribed by the Commissioner in Appendix B to this subchapter. In addition to any penalty provided pursuant to §6-02 of this chapter an owner who submits a certification pursuant to this subdivision knowing that such certification contains a false statement or false information shall be subject to prosecution under article one hundred seventy-five of the penal code and the telephones with respect to such certification shall be removed pursuant to §6-26 of this chapter.

(d) **Fee for interim eligible public pay telephones.**

(1) The fee for each public pay telephone identified in a registry shall be seventy-five ($75) dollars a year. Such fee may be paid in full upon submission of the registry or may be payable quarterly following the schedule set forth below. Each payment shall specify, in the form prescribed by the Commissioner, whether the amount submitted represents yearly or quarterly payments.

(2) Quarterly payments shall be submitted each year as follows:

First payment: March 15, except that the first payment in the year 1996 shall be due on March 31; Second payment: June 15; Third payment: September 15; Fourth payment: December 15.

(3) **Partial payments shall not be accepted.** An owner of interim eligible public pay telephones shall submit yearly payment in full in advance or quarterly payment in full in advance for each such telephone identified on the registry by the required date.

(4) In the event that the owner of an interim eligible public pay telephone identified on a registry and otherwise in compliance with the provisions of this subchapter is awarded a franchise prior to the expiration of a period for which payment for such telephone has been received by the Department, the amount of such payment shall be prorated to the time remaining in such period, and the remainder shall be applied to the fee for a permit pursuant to the franchise.

(5) In the event that the Commissioner determines not to recommend the award of a franchise prior to the expiration of a period for which payment for a public pay telephone has been received by the Department or in the event that the Franchise and Concession Review Committee determines not to award a franchise to such owner prior to the expiration of such period, the amount of such payment shall be prorated to the time that the Department receives certification that such telephone has been transferred or removed, and the remainder shall be reimbursed to the owner.

(6) In the event that the Commissioner objects to a public pay telephone and requires the removal of such telephone pursuant to this subchapter, the fee paid for the interim registry of such public pay telephone shall be prorated to the time such telephone was authorized to be operated and maintained and the remainder shall, upon certification by the owner that such telephone has been removed, be reimbursed to the owner.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

Subd. (a) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See Note 1]

Subd. (b) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See Note 1]

Subd. (d) par (3) amended City Record Feb. 16, 2006 §6, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 13, 1997:

Section 23-403 of the Administrative Code, as added by Local Law 68 for the Year 1996, authorizes the Commissioner of Information Technology and Telecommunications to promulgate rules to implement the provisions of that law, including rules on requirements for public pay telephones. These amendments to the Rules address difficulties encountered in regard to the Interim Registry, Public Nuisance Telephones and Siting and Clearance Requirements. PPTs not currently on the interim registry may be added to the registry between February 13, 1997 and March 14, 1997 upon payment of all fees and penalties. In order to register a PPT, owners will be required to pay in full the $75 interim registry fee for the year ending March 14, 1997 and a penalty for operating a PPT without a permit. Thereafter, an annual fee of $75 shall be paid for each PPT on a registry. The Environmental Control Board has agreed to assess a fine of $400 for violations of section 23-402 of the Rules for a PPT submitted for the registry during this period. Each PPT added to the registry incurs a separate penalty. In addition, proof that the PPT was installed and activated prior to March 1, 1996 will be required.

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

Chapter 6 amended extensively in City Record May 31, 2000. Note provisions of City Record May 31, 2000. Statement of Basis and Purpose of Amendments: The Commissioner of the Department of Information Technology and Telecommunications is authorized by subdivision b of §23-403 of the Administrative Code of the City of New York to promulgate rules governing public pay telephones in the City of New York. Chapter 6 of Title 67 is being amended to provide that notice may also be by any method permitted under the public pay telephone franchise; to clarify the requirements for advertising on public pay telephone installations; to clarify

the mandate of Local Law 68 of 1995 regarding the permitting of public pay telephones located on the inalienable property of the City of New York; to clarify the permit application, review and determination process; to clarify and expand the siting requirements for public pay telephones; to clarify the restrictions upon the number of new public pay telephone installations on a sidewalk between two street corners in the City of New York; and to clarify the authority of the City of New York to operate public pay telephones for the account of the City, in lieu of removal of such pay phone or pay phones.
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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

22 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-25

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-25 Objection by the Commissioner.

(a) The Commissioner may object to the continued maintenance and operation of an interim eligible public pay telephone at the time a registry is submitted or any time thereafter. The Commissioner may make such objection upon the basis that the maintenance and operation of such public pay telephone: (i) poses a danger to life or property, including but not limited to the reasons that such telephone does not meet applicable standards in the Building Code (Title 27, Chapter 1 of the Code) or such telephone does not have twenty-four hour coinless 911 access or New York State Public Service Commission approved operator service; (ii) unreasonably interferes with the use of a street by the public; (iii) unreasonably interferes with the abutting property; (iv) is a public nuisance as such term is defined in §23-401 of the Code or §6-01 of this Chapter, when a complaint, including but not limited to a complaint by the Community Board in the Community District in which such telephone is located, that such public pay telephone constitutes a public nuisance as so defined has been verified by the police precinct in which such telephone is located; or (v) interferes with a street widening or other capital project.

(b) Where the Commissioner objects to a public pay telephone pursuant to subdivision (a) of this section, he or she shall notify the owner of such telephone in writing. Such notice shall state the basis on which the Commissioner objects to the continued maintenance and operation of such telephone and shall specify the condition or conditions underlying such objection. The Commissioner may, in his or her discretion, permit such telephone to be operated and maintained subject to such corrective conditions as the Commissioner shall prescribe.

(c) Within fifteen days of such notice of a Commissioner's objection, the owner may respond to the Commissioner in writing, and may (i) set forth any reason the owner believes the Commissioner's objection should be withdrawn or (ii) certify to the Commissioner, in a form prescribed by the Commissioner, that the condition underlying such objection has been corrected.

(d) The Commissioner shall review such response and may determine whether or not to withdraw the objection. Where the Commissioner determines not to withdraw an objection to a public pay telephone, he or she shall notify the owner of such determination and the reasons therefor and shall require that such telephone be removed immediately or, if appropriate, afford such owner an opportunity to cure the condition underlying the objection, as appropriate. Such notice shall specify the time by which certification must be received that such condition has been corrected.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-26

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-26 Removal.

(a) **Failure to Submit Registry.** An owner who fails to submit a registry pursuant to the provisions of this subchapter shall immediately remove all interim eligible public pay telephones.

(b) **Additional Grounds for Removal.** In addition, an owner of an interim eligible public pay telephone shall immediately remove such telephone:

(i) if such telephone has not been identified in the registry submitted pursuant to the provisions set forth in §6-22 of this subchapter;

(ii) upon the occurrence of an event described in §6-23 of this subchapter;

(iii) upon an objection by the Commissioner to such telephone pursuant to §6-24 of this subchapter, unless the condition underlying such objection could be cured without removing such telephone and such objection has been cured by the time required by the Commissioner or the Commissioner has withdrawn the objection;

(iv) if the fees for such telephone have not been paid by the required date;

(v) if the certification required pursuant to §6-24 of this subchapter has been determined to be false.

(c) **Removal by Department.** Upon failure of an owner to remove a public pay telephone as required by the provisions of this section, such telephone shall be subject to removal by the Department pursuant to paragraph (aa) of subdivision i of §23-408 of the Code. The Commissioner shall notify the owner that such telephone has been removed by the Department. Such notice shall inform the owner of the requirements for reclaiming such telephone. Where removal of a public pay telephone has been ordered by the Commissioner pursuant to the provisions of subdivision b of §23-404 of the Code due to a street widening or other capital project, or other improvement, and the owner of such public pay telephone does not choose to install such telephone at a different location, the fee for such telephone shall be prorated to the time such telephone was authorized to be operated and maintained and the remainder thereof refunded to the owner.

(d) **Failure by Owner to Remove.** Failure to remove a public pay telephone as required by the provisions of this section shall constitute a violation of this subchapter and shall subject the owner of such telephone to the penalties provided therefor in §6-02 of this chapter.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

24 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-27

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

CHAPTER 6*2 PUBLIC PAY TELEPHONES

SUBCHAPTER B*4 INTERIM REGISTRY

§6-27 Requirement of Registry as Precondition for Permit.

An owner of an interim eligible public pay telephone who has been awarded a public pay telephone franchise shall be eligible to receive a permit pursuant to this chapter only if (i) the owner has identified such telephone on a registry of public pay telephones and submitted such registry and all interim occupancy fees for such telephone as required by the provisions of this subchapter, and (ii) the Commissioner has not objected to such telephone, or such objection has been withdrawn or the condition underlying such objection has been cured to the satisfaction of the Commissioner.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Feb. 29, 1996. [See Chapter 6 footnote]

FOOTNOTES

2

[Footnote 2]: * Chapter added City Record January 30, 1996 effective February 29, 1996.

Note Statement of Basis and Purpose in City Record January 30, 1996: Local Law Number 68 for the Year

1995 takes effect on March 1, 1996 and provides for the franchising and permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements of the Law. Section 6 of Local Law 68 provides that telephones not previously licensed pursuant to former sections 19-131 and 19-128 of the Administrative Code of the City of New York and some new public pay telephones which have received permits from the Commissioner of the Department of Information Technologies and Telecommunications may continue to operate after March 1, 1996 under certain conditions if the owners submit registries identifying such telephones, and further authorizes the Commissioner to promulgate rules for such registries. The rule was not listed in the Agency's Regulatory Agenda because Local Law 68 had not been enacted at the time the Regulatory Agenda was published.

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[Footnote 4]: * Subchapter added City Record January 30, 1996 effective February 29, 1996.

25 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX A*1 PUBLIC PAY TELEPHONE INTERIM REGISTRY SUBMISSION

APPENDIX A*1 PUBLIC PAY TELEPHONE INTERIM REGISTRY SUBMISSION

The following is instructional information on the process of submitting a Public Pay Telephone Interim Registry to the Department of Information Technology and Telecommunications. The Interim Registry information submission is done in 2 parts. The first part is a **single line** providing information about the company. There should only be one single line entry with information about the company.

The second part is made up of **multiple single line entries,** one line providing information on each of the individual Public Pay Telephones being submitted as part of the company's registry. Each Public Pay Telephone (PPT) being submitted as part of the Interim Registry must have a line in part 2. Samples of each acceptable submission entry types are included. You must fill out all fields. Interim Registry submissions should be sent to: The Department of Information Technology

and Telecommunications

11 MetroTech Center, Third Floor

11201

Att: PPT-IR Submission

Computer Compatible Format

ASCII Text-File Format

It is preferred that this information be supplied in computer compatible format, preferably in an ASCII text-file format submitted on a 3.5" diskette(s). Most spreadsheets, databases and word processor applications (for example LOTUS 1-2-3, DBASE, WORDPERFECT) provide for the conversion of their respective native files into an ASCII text-file format that allow for the transfer of data between applications.

If you cannot provide a converted ASCII text-file format from your computer's application please submit it in its native format following the same order of columns or fields as requested. **See Spreadsheet, Database and Word Processor Submissions.**

The ASCII Text-File information being requested is column dependent. That is, the number of characters in a column is preset and must not be altered. If the data requested does not fill up an entire designated column then the rest of the field should be filled with spaces until the total amount of characters for the designated columns is entered. For example, if your company name (columns 1-50) fills columns 1 through 35, then columns 36 through 50 should be filled with space characters. We have attempted to allow for a wide variety of entries. If the data requested does not fit in the column then use standard abbreviations. This should be followed for all columns. A breakout of the required fields and their respective column positions is described in Table I.

Spreadsheet, Database and Word Processor Submissions

If you are submitting a spreadsheet, database or word processor file then the respective columns or fields must follow the specified order and breakdown as those stated in the ASCII text-file format. The amount of information taken from any one column or field will be the same as that reflected in the ASCII text-file format. The company information columns/fields and the PPT information columns/fields should be the same width, conforming to whichever column/field is larger.

Handwritten/Typed Submissions

Handwritten or typed submissions must follow the same format as the computer compatible entered. They should either be typed or clearly printed. A blank form is appended that may be copied should more pages be required.

Interim Registry Payments

All payments must be made by check or money order payable to: The NYC Department of Finance

[Table 1]:

Sample I ASCII Text-File FormatFirst Part-Company Information

Blue Rock Communications, Inc. 1500 Bluebird St. Binghamton NY 113590110 9145648700 Jackie Q. Smith President 9145648720

1_____50 51_____100 101_____125 126-127 128_____136 137_____146 147_____196 197_____221 222_____231

Sample I Second Part-PPT Information

2125553210 MN 123-45 Queens Blvd* SE Broadway 44 St* 42 St. 8 Ave 7 Ave. E* Pedestal Small N 06/14/93 07/02/93 OSP PROS INC

1_____10 11-12 14_____23 24_____43 44-45 46_____65 66____85 86____105 106____125 126____145 146 147____156 157____166 167 168_____175 176_____183 184_____233

* Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

Sample 2 Spreadsheet, Database and Word Processor Submissions

Blue Rock Communications, Inc.	1500 Bluebird St.	Binghamton	NY	113590110	9145648700	Jackie Q. Smith	President	9145648720

2125553210	MN	123-45	Queens Blvd*	SE	Broadway	44 St*	42 St	8 Ave

Sample 2 Spreadsheet, Database and Word Processor Submissions (continued)

7 Ave	E*	Pedestal	Small	N	06/14/93	07/02/93	OSP PROS INC

* Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

Sample 3 Manual Entry Sheet for Public Pay Telephone Interim Registry Submission

Sample 3 First Part-Company Information

Company Name	Company StreetAddress	City	State	Zip Code + 4	CompanyTelephone Number	Contact	Contact Title	Fax Number
Blue RockCommunications, Inc.	1500 Bluebird St.	Binghamton	NY	113590110	9145648700	Jackie Q. Smith	President	9145648720

See guidelines in Table I Part 1.

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*		PPT location 2.*		PPT location 3.*		
2125553210	MN	123-45	Queens Blvd*	SE	Broadway	44 St*	42 St	8 Ave	7 Ave	E*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationDate	Operator Service Provider
Pedestal	Small	N	06/14/93	07/02/93	OSP PROS INC.

See guidelines in Table I Part 2. *Use only one method of providing PPT location per unit.

Table I

Part 1-Company information. One line for entire file, followed by Part 2.

ItemNumber	Columns	Description
1	1-50	Company NameInsert the name of the company as it would appear in any legally binding document, e.g. Blue Rock Communications, Inc.
2	51-100	Company Street Addresse.g. 1500 Bluebird St.
3	101-125	Citye.g. Binghamton
4	126-127	StateNote: 2 characters maximum, no periods, e.g. NY

5	128-136	Zip Code + 4Standard Zip Code plus 4 digit extension, if available, without dashes or blanks.e.g. 113590110
6	137-146	Company Telephone NumberArea Code and 7 digit number, without dashes or blanks.e.g. 9145648700
7	147-196	ContactPlace name of company contact person in First Name, Middle Initial, Last Name order. Do not include the commas.e.g. Jackie Q. Smith
8	197-221	Contact Titlee.g. President
9	222-231	Fax NumberArea Code and 7 digit number, without dashes or blanks.e.g. 9145648720

Table I

Part 2-PPT information. One line for each PPT entry.

ItemNumber	Columns	Description
1	1-10	Telephone numberArea Code and 7 digit number, without dashes or blanks.e.g. 2125553210
2	11-12	Boroughe.g. Manhattan=MN Bronx=BX Brooklyn=BK Staten Island=SI Queens=QN
3a	14-2324-43	PPT location 1.*Street address-This is the first, and most preferable, of three available methods to provide the physical location of a PPT. It is done in 2 sections. The first section (columns 14-23) should provide the street number, e.g. 123-45, the second section (columns 24-43) should provide the street name, e.g. Queens Blvd
3b	44-4546-6566-85	PPT location 2.*Corner installations-This method describes corner installations that are not tied to a street address. It is done in 3 sections. The first section (columns 44-45) should provide the compass direction of the PPT location at the intersection, i.e. Northwest=NW, Northeast=NE, Southwest=SW, Southeast=SE. The second section (columns 46-65) should provide the primary intersecting street, e.g. BroadwayThe third section (columns 66-85) should provide the secondary intersecting street, e.g. 44 St
3c	86-105106-125 126-145146	PPT location 3.*Mid block installations-This method describes mid block installations that are not tied to a street address. It is done in 4 sections.The first section (columns 86-105) should provide the street the PPT is located on.e.g. 42 StThe second section (columns 106-125) should provide the first bordering street, e.g. 8 AveThe third section (columns 126-145) should provide the second bordering street, e.g. 7 AveThe fourth section (column 146) should provide the compass direction of the side of the street the PPT is located on, i.e. North=N South=S East=E West=W
4	147-156	Mounting TypeDescribe the type of mounting supporting the PPT, e.g. Pedestal, Wall or if it is another type, describe.
5	157-166	Housing TypeDescribe the type of housing around the PPT, i.e. None, Small (i.e. Sardine Can), 3/4 Booth or if it is another type, describe.
6	167	Curbside installationIf PPT is installed at the curbside indicate by typing Y, if not type in N.

7	168-175	Installation DateNote the date original installation of the PPT. Format is MM/DD/YR, e.g. 06/14/93.
8	176-183	Activation DateNote the date of original activation of the PPT. Format is MM/DD/YR, e.g. 07/02/93.
9	184-233	Operator Service ProviderNote the name of the Operator Service Provider for the PPT, e.g. OSP PROS INC.

*Use only one method of providing PPT location per unit. Unused methods should contain all spaces.

[Table 2]:

Manual Entry Sheet for Public Pay Telephone Interim Registry Submission

Please type or print clearly

Sample 3 First Part-Company Information

Company Name	Company StreetAddress	City	State	Zip Code + 4	CompanyTele-phone Number	Con-tact	Contact Title	Fax Num-ber

See guidelines in Table I Part 1. This entry should be submitted only once.

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

See guidelines in Table I Part 1. *Use only one method of providing PPT location per unit.

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Bor o	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

[Table 3]:

Please type or print clearly

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

Sample 3 Second Part-PPT Information

Telephone Number	Boro	PPT location 1.*	PPT location 2.*	PPT location 3.*

Mounting Type	Housing Type	CurbsideInstallation	InstallationDate	ActivationD-ate	Operator Service Provider

FOOTNOTES

1

[Footnote 1]: * Appendix A added City Record January 30, 1996 effective February 29, 1996. [See Chapter 6 footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

APPENDIX B*8 CERTIFICATION

This certification must be completed before a notary public by the owner or authorized representative of the owner of the public pay telephones identified on the registry submitted herewith.

A MATERIAL FALSE STATEMENT OR OMISSION MADE IN THE INFORMATION SUBMITTED ON A DOCUMENT SUBMITTED IN CONNECTION WITH ANY PUBLIC PAY TELEPHONE IDENTIFIED ON THE REGISTRY OF PUBLIC PAY TELEPHONES AFFIXED HERETO IS SUFFICIENT CAUSE FOR REMOVAL OF SUCH TELEPHONE FROM THE REGISTRY, THEREBY REQUIRING THE REMOVAL OF SUCH TELEPHONE FROM ITS LOCATION AND PRECLUDING THE OWNER FROM OBTAINING A PERMIT FOR SUCH TELEPHONE PURSUANT TO LOCAL LAW 68 FOR THE YEAR 1996. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE OWNER AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I _____ (full name), being the owner [or an authorized representative of the owner] of the public pay telephones identified on the registry submitted herewith. _____ (name of owner), and being duly sworn, do hereby certify that, to the best of my knowledge, the information presented in this and any accompanying document as noted below, including any form of computer diskette, is, to the best of my knowledge, truthful, accurate and complete.

I certify further that each public pay telephone identified on the registry submitted herewith provides twenty-four hour coinless 911 service and operator service in compliance with the requirements of the New York State Public Service Commission and is in compliance with the safety requirements contained in the Building Code (Administrative Code of the City of New York, Title 27, Chapter 1).

Accompanying documents (include any submission, such as computer diskette):

_____; _____;

_____; _____;

_____; _____;

_____; _____.

Company: _____Title: _____Print Name: _____Signature: _____

Sworn to me

this ____ day of ____, 199__

(Notary Public)

27 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-30

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-30 Permit Required.

(a) Except as provided in subchapter B of this chapter in regard to interim eligible public pay telephones and subdivision (a) of §5 of Local Law No. 68 for the Year 1995 in regard to telephones licensed pursuant to former §§19-131 or 19-128 of the Code, no public pay telephone shall be installed, operated or maintained on, over or under any street or other inalienable property of the City, or installed such that a user of such public pay telephone can only use such telephone while standing, in whole or in part, on the inalienable property of the City, unless the owner of such telephone has received a permit for such telephone from the Commissioner pursuant to the provisions of this subchapter. Pursuant to §7 of Local Law No. 68 for the Year 1995, the period of three years following the effective date of Local Law No. 68 for the Year 1995, provided for in subdivision (a) of §5 of such local law regarding the continuation in effect of the licenses previously issued to the telephone company, and the period of three years provided for in subdivision (c) of such section regarding the obligation of the telephone company to pay commissions, are extended until September 4, 1999, or until ninety days following such date as the telephone company may be granted a franchise to install, operate and maintain public pay telephones, whichever is earlier.

(b) A permit shall include such terms and conditions for the operation of a public pay telephone as the Commissioner deems necessary to protect the public safety and to safeguard the interests of the City, including but not limited to the requirements that such telephone be in compliance with the requirements set forth in subchapter D of this chapter.

(c) A permit issued pursuant to this subchapter is valid only for the public pay telephone installation at the location for which such permit was issued and may not be transferred to a person other than the owner to whom such permit was issued without the written approval of the Commissioner.

(d) Notwithstanding any other provision of this chapter, a permit for a public pay telephone shall not be issued, unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §7, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) amended City Record Mar. 8, 1999 eff. Apr. 7, 1999. [See Note 1]

Subd. (c) amended City Record Feb. 16, 2006 §8, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 8, 1999:

The Commissioner of the Department of Information Technology and Telecommunications is authorized by §7 of Local Law No. 68 for the Year 1995 to extend any time period provided for in §5 of Local Law No. 68 for the Year 1995, based upon a determination that such extension would be in the best interests of the City. The Commissioner has determined that the extension of the period of three years to three and one-half years from the effective date of Local Law No. 68 for the Year 1995, for the telephone company to retain its licenses issued pursuant to former §§19-131 and 19-128 of the Administrative Code of the City of New York, in effect pursuant to §5(a) of Local Law No. 68, and for the telephone company to retain its obligation to pay commissions on revenues derived from public pay telephones, in effect pursuant to §5(c) of Local Law No. 68, is in the best interests of the City. This extension will allow the City to complete the process of franchising public pay telephones, as contemplated by Local Law No. 68, and provided for in City Council Authorizing Resolution No. 2248, dated March 25, 1997, and the Revised Request for Proposals for Franchises for Public Pay Telephones, released June 9, 1997.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon its final publication in The City Record, of a rule to further extend the three-year extension of existing telephone company licenses and commission payments pursuant to section five of Local Law No. 68 for the Year 1995 ("Local Law 68") by six months, until September 4, 1999. The earlier implementation of such rule is necessary to provide regulatory continuity until the City has completed the process of franchising public pay telephones. Local Law 68 contemplated that the franchising process would be completed within three years of the effective date of the law. Section five of Local Law 68, therefore, extended existing public pay telephone licenses held by the telephone company, as well as the telephone company's obligation to pay commissions to the City on revenues derived from such licenses, for a period of three years from the effective date of the law (until March 4, 1999). However, Local Law 68 also recognized that an extension of this period might be needed, and provided that it could be extended by the DoITT Commissioner by rule, upon a determination that such extension would be in the best interests of the City (Local Law 68, §7). While DoITT has made substantial progress towards the award of franchises and anticipates making awards in the next several months, the process has been lengthier than anticipated for several reasons, including a modification by the City Council of the Authorizing Resolution governing such franchises which necessitated the issuance of a revised Request for Proposals. Immediate

implementation of the rule providing for an extension of the three-year period will prevent disruption of public pay telephone service and the fees paid to the City pursuant to existing agreements between the telephone company and the City during the period required for the completion of the franchising process.

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

28 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-31

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-31 Issuance and Transfer of Permits.

(a) The Commissioner may issue permits based upon a determination, at his or her discretion, that issuance of a permit would be in the best interests of the City.

(b) A permit shall not be issued:

(1) unless the applicant possesses a franchise to install, maintain and operate public pay telephones on, over and under the streets and other inalienable property of the City; (2) unless the applicant has, where required, obtained the consent of the owner or commercial lessee of a building as provided in §6-34 of this chapter;

(3) where a public pay telephone will unreasonably interfere with the use of a street by the public or where it will unreasonably interfere with the use of the abutting property.

(c) The Commissioner may determine not to issue a permit to an owner of public pay telephones listed in the interim registry submitted pursuant to subchapter B of this chapter where such owner has persistently failed to maintain such telephones free of graffiti or has otherwise failed to repair such telephones or maintain such telephones in a safe and clean condition. The Commissioner may determine that such persistent failure has occurred where an owner has, in excess of two times, failed to remove graffiti or correct any other condition related to the proper maintenance (including but not limited to the requirements in §6-05 and §6-43 of this chapter) of a public pay telephone identified in a

notification to such owner by the Department. The Commissioner shall not consider the prior issuance of a permit as relevant to any determination whether there has been a persistent failure to maintain public pay telephones as required by this subsection.

(d) A permit issued pursuant to this chapter may be transferred to an owner other than the owner to whom the permit was issued, provided that such transfer has the written approval of the Commissioner and provided further that the transferee is the holder of a public pay telephone franchise granted by the City, and on the condition that, as of the date of the proposed transfer, neither party is in arrears or in default of: franchise fees (as defined in §8 of the franchise agreement); interim registry fees; fines owed for notices of violation (assessed by the Environmental Control Board after either the entry of a guilty plea or the issuance of a decision in favor of the City after a hearing); or, any fees payable to the City associated with the installation, operation or maintenance of any public pay telephone installations owned or operated by either party. However, the Commissioner may waive in writing any portion of this subsection if the Commissioner determines that there is a public safety need for the public pay telephone.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (b) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (d) amended City Record Feb. 16, 2006 §9, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

29 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-32

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-32 Application and Fee for Permit.

(a) An application for a permit to install, operate and maintain a public pay telephone shall be in a form prescribed by the Commissioner and shall be accompanied by the permit fee of three hundred ninety-five dollars ($395), subject to any applicable reduction pursuant to paragraph (d)(4) of §6-24 of this chapter.

(b) Applications for a permit pending as of March 15, 2000 shall be denied unless the fee required pursuant to this §6-32 was received by the Department on or before June 30, 2000. Applications received after March 15, 2000 shall be denied if such fee is not included with the application.

(c) An application for an Extension to a Notice to Proceed shall be accompanied by a processing fee of thirty-five dollars ($35). Applications for an Extension to a Notice to Proceed received after the effective date of this §6-32 shall be denied unless accompanied by the fee required pursuant to this §6-32.

(d) Notwithstanding anything to the contrary in this §6-32, no permit application fee shall be required in connection with the installation of a public pay telephone at a particular location if the installing owner has been directed by the Commissioner to install such public pay telephone at such location after a determination by the Commissioner that (i) no application for such an installation at such location has been received by DoITT, and (ii) lack of a public pay telephone at such location may pose a risk to public health, safety or welfare.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §10, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record Oct. 5, 2004 §2, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

30 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-33

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-33 Term of Permit; Termination of Permit.

(a) **Term of permit.** A permit for a public pay telephone shall continue in effect, unless earlier revoked or suspended by the Commissioner pursuant to §6-37 of this subchapter or §23-404 of the Administrative Code, for the term of the franchise held by the owner of such telephone except:

(1) as provided in subdivision (a) of §6-38 of this chapter in regard to newly permitted telephones owned by the telephone company;

(2) as provided in subdivision (b) of this section;

(3) as provided in subdivision (b) of §6-38 of this chapter in regard to a public pay telephone the owner of which has not been awarded a franchise;

(4) as provided in §6-46 of this chapter;

(5) as provided in subdivision (c) of §6-31 of this chapter in regard to an owner of public pay telephones that has persistently failed to maintain such telephones free of graffiti or has otherwise failed to repair such telephones or maintain such telephones in a safe and clean condition; or

(6) if the Commissioner determines after grant of the permit that the permitted public pay telephone was located or

installed in violation of any applicable provision of subchapter D of this chapter.

(b) **Termination of permit.** (1) The Commissioner may terminate a permit and require the removal of a public pay phone upon a determination that (i) the public pay telephone unreasonably interferes with or, as a result of changed conditions, will unreasonably interfere with the use of a street by the public or constitutes a public nuisance; or (ii) that removal of the public pay telephone is required in connection with a street widening or other capital project.

(2) The Commissioner shall notify the permittee of his or her intention to terminate the permit and the reason for such proposed action. No later than five business days following such notification, the permittee may submit a letter to the Commissioner setting forth any reasons why such permit should not be terminated and such telephone removed. The Commissioner shall review the reasons set forth in such letter and shall determine whether to terminate the permit and require the removal of the telephone. The Commissioner shall notify the permittee of his or her final determination and the reasons therefor and shall, where applicable, specify in such notice the date by which the telephone shall be removed. In the event that the permittee fails to remove the public pay telephone by the date specified by the Commissioner, the Commissioner may remove or cause the removal of the public pay telephones and have repair and restoration work performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(3) (i) In the event that a public pay telephone is removed in connection with a street widening or capital project as provided in subparagraph (b)(1)(ii) or at the request of the Commissioner, the permittee may apply to the Commissioner for permission to reinstall the public pay telephone at another location (provided however that such installation shall be compliant with §6-41 of this chapter, unless such compliance is waived in writing by the Commissioner) or, following the completion of such street widening or capital project, at or near its original location. A fee will not be required.

(ii) Where such permission is granted, the permittee shall not be required to obtain a new permit for the public pay telephone and the permit previously issued for such public pay telephone shall continue in effect. In the event that the permittee elects not to install such public pay telephone at another location, the fee for such a permit shall be kept in reserve and may be applied to the next permit requested by the permittee.

(iii) If such public pay telephone is reinstalled at another location the permittee may apply to the Commissioner for a new permit to install another public pay telephone following the completion of such street widening or capital improvement at the same address as the original public pay telephone previously removed in connection therewith. The Commissioner, acting at his or her discretion, may award or deny such application based upon a determination that such action is in the best interests of the City.

(iv) If a pending application pursuant to paragraph (b)(2) of §6-35 would, if granted, render the location requested in the application under this subdivision (b) inconsistent with §6-41 of this chapter, then the application under this subdivision shall not be granted unless the pending application pursuant to paragraph (b)(2) of §6-35 shall be rejected. If the pending application pursuant to paragraph (b)(2) of §6-35 shall be granted, the application for relocation under this subdivision shall be denied.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §11, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (b) par (1) subpar (i) amended City Record Feb. 16, 2006 §12, eff. Mar. 18, 2006. [See T67

§6-02 Note 2]

Subd. (b) par (3) amended City Record Feb. 16, 2006 §13, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-34

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-34 Consent of Building Owner/Commercial Lessee Required.

(a) **Opening, drilling or other physical alteration.** No permit for a public pay telephone shall be issued or renewed pursuant to this subchapter without the written consent of the owner of an affected building or other private property where the installation of such public pay telephone requires the opening, drilling or other physical alteration of a building facade or other private property or the affixing of such telephone to a building facade or other private property. Such consent shall be provided to DoITT in either of the following two forms:

(1) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone such rights to open, drill or otherwise physically alter (including, without limitation, affixing the telephone to) the building facade or private property as are necessary to install and operate such public pay telephone, which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true and complete copy of a document signed by the building owner, or

(2) an alternative consent form to be prescribed by the Commissioner.

(b) **Access through conduit.** (1) Where the installation of a public pay telephone, if accomplished in a manner other than described in subdivision (a) of this section, requires access through an existing conduit or other opening on a building facade or other private property, or such installation is to be made within six feet of a building line, no permit

shall be issued or renewed without the written consent of either the building owner or the commercial lessee.

(i) If the consent is from the building owner, the form of such consent shall be provided to DoITT in either of the following two forms:

(A) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone any and all rights of access necessary to install and operate such public pay telephone (or, if no such access is required but the applicable installation is to be within six feet of the building line, granting the building owner's consent to such location) which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true copy of a document signed by the building owner; or

(B) an alternative consent form to be prescribed by the Commissioner.

(ii) If the consent is from the commercial lessee, the requirements for the form of such consent shall be the same as that for consent from the building owner as set forth in the preceding subparagraph (i), except that references to "building owner" in subparagraph (A) of said subparagraph (i) above shall be deemed to refer to "commercial lessee" and except that in addition to the consent required under subdivision (i) above, there shall also be required a certification by the commercial lessee certifying that the building owner has authorized the commercial lessee to grant such consent and the commercial lessee has provided the building owner (or its authorized agent) with written notification (by certified mail) of such granting of consent (such written notification to include the name and address of the owner of the public pay telephone and the location of the public pay telephone in relation to the building). Such certification by the commercial lessee must be accompanied by proof of mailing of the notification to the building owner referred to in such certification.

(2) Within thirty (30) days of receipt by a building owner of a commercial lessee's consent pursuant to subdivision (1) of this subdivision (b), a building owner or an authorized agent of an owner may object to the installation of a public pay telephone by notifying the applicant for a permit or the permittee, with a copy to the Commissioner, by certified mail. Within ten days of receipt of a notice in compliance with the provisions of this paragraph, such applicant or permittee shall (if the public pay telephone objected to in such notice has been installed) remove such public pay telephone unless he or she responds to the Commissioner, with a copy of such response to the owner, stating why the applicant or permittee believes that the owner lacks authority to object to the installation.

(3) The provisions of paragraph (1) of this subdivision (b) shall not apply in regard to a public pay telephone installed and activated on or before August 1, 1994 that has been in continuous use since such activation date and for which application for a permit has been made within thirty days of the award of a franchise to the owner of such telephone.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the

permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-35

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-35 Notification by Department to Agencies and Review of Application for Permits.

(a) **Notification.**

(1) The Department shall notify the Department of Transportation or any successor of such agency, on a periodic basis of the location of public pay telephones for which permits are being sought, except for the telephones identified in the application described in subdivision (a) of §6-38.1 of this subchapter. The Department of Transportation may review such locations and, within thirty (30) business days of such notification, submit comments to the Commissioner in regard to any such telephone or telephones.

(2) The Department shall also, on a periodic basis, notify the pertinent Borough Presidents, Council Members and Community Boards of the opportunity to review permit applications that have been received from franchisees for public pay telephones. A Borough President, Council Member, or Community Board may review any such application and, within thirty business days of such notification, submit comments in writing to the Commissioner in regard to such application. The Commissioner may extend such review period by an additional ninety days upon determining that an additional period is necessary for a full and complete review of such permit applications.

(3) If the Department determines that a proposed public pay telephone is located in an historic district, approval of such application will be contingent upon compliance with the rules of the Landmarks Preservation Commission concerning public pay telephone installations.

(b) **Review of comments and application.**

(1) **Review and conditions.**

(i) The Commissioner shall review the application for permits and any comments received from agencies, Borough Presidents, Council Members, Community Boards, and other members of the public prior to making a determination regarding such permits. The Commissioner shall notify the owner of any requirement that shall be a condition of the issuance of a permit. The owner may, within five (5) business days of such notice from the Commissioner, object in writing to the Commissioner to any such condition. The Commissioner shall review such objection and notify the owner of his or her determination and the reasons therefor.

(ii) Applications are not transferable by the owner who submits such applications. Upon approval of an application, a permit shall be granted only to the entity that submitted the application. If the entity that submitted the application is not eligible to receive a permit, the application will be denied.

(2) **Pending applications for permits.** If two or more applications for permits received by DoITT prior to November 23, 1998 constitute a pair or group of applications only one of which can be granted consistent with subdivisions (f) and (j) of §6-41 of this chapter, then of such pair or group the qualifying application (as defined in paragraph (b)(4) of this §6-35), if any, which was received first by DoITT shall be granted and the other applications in such pair or group shall be denied.

(3) **New applications for permits.**

(i) Applications (other than applications pursuant to paragraph (b)(2) of this §6-35 or to §6-38.1 of this chapter) for permits by franchisees will be accepted for review by the Department with respect to proposed locations in the boroughs of Queens, the Bronx, Brooklyn and Staten Island and in Manhattan north of 96th Street, commencing sixty days after the effective date of this paragraph (b)(3).

(ii) During a period commencing on the 60th day after the effective date of this paragraph and ending on the 150th day after the effective date of this paragraph, public pay telephone franchisees may submit applications. The Department shall review such applications in a first period of permit application review ("the First Review Period"). During the First Review Period, the maximum number of applications submitted by any franchisee may not exceed either the sum of fifty (50) applications plus five per cent (5%) of the franchisee's total number of licensed, permitted and registered public pay telephones as of December 31, 1999, or three hundred (300) applications, whichever is less. Franchisees that share substantial common ownership (as defined in §6-01 of Subchapter A) shall be treated as a single franchisee for purposes of §6-35(b)(3).

(iii) Each franchisee shall assign a priority number (the "Priority Number" or "Priority") to each application submitted during the First Review Period. The Department will conduct a lottery among all franchisees submitting one or more applications during the First Review Period to assign randomly the order in which each franchisee's applications will be reviewed (the "Order of Review Number" or "Order of Review"). The Department will first review (and determine whether to grant or deny) the highest Priority Number "Qualifying" application (as defined in paragraph (b)(4) of this §6-35) of the franchisee that received Order of Review Number 1. After determination of that application, the Department will review and determine the highest Priority Qualifying application of the franchisee with Order of Review Number 2. The Department will continue to review the highest Priority Qualifying applications submitted by each franchisee, according to the franchisees' Order of Review numbers, until all of the highest priority Qualifying applications have been reviewed and determined. Thereafter, the Department will review the application designated with the second highest Qualifying Priority Number, but beginning with the franchisee having the last Order of Review Number assigned in the lottery. Upon completion of all of the second highest Priority Qualifying applications, the Department will begin reviewing all third highest Priority Qualifying applications (and all subsequent odd-numbered Priority Qualifying applications) again beginning the review with the franchisee having Order of Review Number 1.

Fourth highest Priority Qualifying applications (and all subsequent even-numbered Priority Qualifying applications) will be reviewed beginning with the franchisee having the last Order of Review Number, until all applications received in the First Review Period have been determined.

(iv) An application for permit under this paragraph (b)(3) will not be granted during the pendency of any application for permit under paragraph (b)(2) of this §6-35 that would, if granted, permit the placement of a public pay telephone in a location that would render the location requested in the application under this paragraph (b)(3) inconsistent with §6-41 of this chapter. If such application under paragraph (b)(2) is approved and a permit granted, then such application under this paragraph (b)(3) will be denied.

(4) A "qualifying" application for a permit is defined as an application that would be granted under the provisions of this chapter if there were no competing application for permit.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Feb. 16, 2006 §14, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (b) amended City Record Feb. 16, 2006 §14, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

33 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-35.1

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-35.1 New Applications for Permits.

The Commissioner may periodically identify areas where the installation of public pay telephones would be consistent with other uses of the City's rights of way. When the Commissioner identifies such an area, then an invitation to submit applications shall be sent to all franchisees. This invitation shall include any limitations deemed necessary at that time.

HISTORICAL NOTE

Section added City Record Feb. 16, 2006 §15, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of

Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

34 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-36

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-36 Revocation of Permits, Removing and Rendering Public Pay Telephones Inoperable.

(a) **Grounds for action by the Commissioner.** The Commissioner may take such action pursuant to this section that he or she deems necessary and appropriate where:

(1) there is reasonable cause to believe that an owner, or any employee, agent or independent contractor of such owner has violated the provisions of chapter 4 of title 23 of the Code or any provision of this chapter, or any of the terms or conditions contained in the permit for a public pay telephone issued pursuant to the provisions of subchapter C or the terms and conditions of the owner's franchise agreement;

(2) a public pay telephone unreasonably interferes with the use of a street by the public or the use of abutting private property or constitutes a danger to life or property or a public nuisance;

(3) a knowing material omission or false statement has been made in relation to any application or certification made pursuant to this chapter; or

(4) an owner of a public pay telephone has failed to pay any fines or penalties imposed in relation to such telephone.

(b) **Actions by the Commissioner.** In addition to any civil or criminal penalties provided by law, the

Commissioner may take one or more of the following actions upon the occurrence of an event described in subdivision (a) of this section.

(1) **Revocation of permit and removal of telephone.** The Commissioner may revoke a permit, and upon such revocation, may further order the removal of the public pay telephone for which such permit has been issued. In the event the permittee fails to remove the public pay telephone and to perform related repair and restoration work within the time period specified by such order, the Commissioner may remove or cause the removal of the public pay telephone and have repair and restoration work performed at the expense of the former permittee, who shall be liable for the amount expended by the City.

(2) **Rendering a telephone inoperable.** The Commissioner may render a public pay telephone inoperable except for the purpose of emergency telephone service through the 911 system or an operator. Such action may continue until the permittee has corrected the condition to the satisfaction of the Commissioner and payment has been made of all civil penalties imposed for the violation and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such condition. The Commissioner shall affix to any public pay telephone rendered inoperable pursuant to this paragraph a notice advising the public that the phone may be used only for emergency telephone service through the 911 system or an operator and setting forth the provisions of §23-408(i)(1)(cc) of the Code. Any device utilized by the Commissioner for the purpose of rendering a public pay telephone inoperable shall be designed so as to permit the unimpaired use of the public pay telephone upon the removal of the device.

(3) **Suspension of review of applications.** The Commissioner may suspend review of all applications for the issuance or renewal of permits filed by such owner pursuant to this chapter. Such suspension may continue until the condition has been corrected to the satisfaction of the Commissioner and payment has been made of all fines or civil penalties imposed for the violation, any costs incurred by the City for removal and related repair or restoration work, and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such condition.

(4) **City authority to operate.** The Commissioner may invoke the Department's authority pursuant to §6-47 of this chapter.

(c) **Notification to permittee and opportunity to contest Commissioner's action.** Except as provided in subdivision (e) of this section, before taking an action pursuant to this section, the Commissioner shall notify the owner of a public telephone with regard to which the action is proposed of the reason for such proposed action. Such notice shall specify the action, if any, that may be taken by the permittee to correct the condition and the manner and time period in which such condition must be corrected or in which, if the condition is not one that is capable of correction, the time by which the telephone shall be removed. Except as provided in subdivision (d) of this section the owner shall respond no later than five business days following such notice. Such response shall either: (i) certify to the Commissioner that such condition has been corrected in accordance with the manner specified by the Commissioner in such notice; or (ii) set forth the reasons why the Commissioner should not take the proposed action. Failure of an owner to timely respond to such notice by the Commissioner shall constitute default, and shall subject the owner to revocation of the permit and removal of the telephone pursuant to the provisions of subdivision (a) of this section. The Commissioner shall review the response of the permittee and notify the permittee of the final determination and the reasons therefor.

(d) **Expedited removal of public nuisance.** Notwithstanding any other provision of this section the Commissioner may, upon determination that a public pay telephone constitutes a public nuisance, notify the permittee of such determination and order that such telephone be removed within five (5) business days. A permittee may respond in writing to the Commissioner no later than five (5) business days following receipt of such notice setting forth any reasons why such telephone does not constitute a public nuisance. If, following review of such reasons, the Commissioner makes a final determination that such telephone constitutes a public nuisance, the Commissioner shall notify the permittee that such telephone must be removed forthwith. Failure to remove such telephone forthwith will

subject the telephone to removal by the Department and repair and restoration work shall be performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(e) **Emergency removal of telephone by Department.** (1) Notwithstanding any other provision of this section, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may remove or cause the removal of a public pay telephone and have repair and restoration work performed at the expense of the owner, without affording the owner an opportunity to be heard prior to such removal. The Commissioner may, if he or she determines that such telephone can be safely reinstalled and maintained, permit the owner to reinstall such telephone.

(2) No more than five (5) business days following the removal of a public pay telephone pursuant to paragraph (1) of this subdivision, an owner of such telephone who is a permittee shall be provided notice of such removal and the reasons therefor and may respond to the Commissioner in writing setting forth the reasons why such telephone should not have been removed. The Commissioner shall review such response and notify such owner within ten days of receipt of such response of his or her final determination and the reasons therefor.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) par (1) amended City Record Feb. 16, 2006 §16, eff. Mar. 18, 2006. [See T67 §6-02

Note 2]

Subd. (b) par (1) amended City Record Feb. 16, 2006 §17, eff. Mar. 18, 2006. [See T67 §6-02

Note 2]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

35 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-37

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-37 Determination of Public Nuisance.

For the purposes of this subchapter, "public nuisance" shall have the meaning set forth in §23-401 of the Code and §6-01 of subchapter A of this chapter. The Commissioner may determine that a public pay telephone constitutes a public nuisance when a written complaint is made, including, but not limited to a complaint by the Community Board in the Community District in which such telephone is located stating that such public pay telephone constitutes a public nuisance, as so defined. The complaint must also be verified by the police precinct in which such telephone is located.

HISTORICAL NOTE

Section amended City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of

Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-38

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-38 Interim Issuance of Permits.

(a) **New telephones owned by the telephone company.** Notwithstanding the provisions of §6-31 of this subchapter which limit the issuance of permits to persons who possess a franchise to install, maintain or operate public pay telephones on, over or under any street or other inalienable property of the City, the telephone company may, if it is in compliance with the provisions of this chapter with respect to its public pay telephones installed and activated prior to March 1, 1996 and not licensed pursuant to former §19-131 or 19-128 of the Code, apply to the Commissioner on or after March 1, 1996 for the issuance of permits for the installation, operation and maintenance of new public pay telephones. A permit issued pursuant to this paragraph shall remain in effect until March 1, 1999 unless the telephone company is awarded a franchise, in which case such permit shall expire upon the expiration of such franchise.

(b) **Other telephones.** Notwithstanding the provisions of §6-31 of this subchapter which limit issuance of permits to persons who possess a franchise to install, operate or maintain public pay telephones on, over or under any street or other inalienable property of the City, an owner of public pay telephones other than the telephone company may apply to the Commissioner for the issuance of permits for the installation, operation or maintenance of new public pay telephones provided that:

(1) all public pay telephones of such owner installed and activated prior to March 1, 1996 are identified on a registry submitted to the Department by such owner and the owner has paid the occupancy fee for such telephones as provided in subchapter A of this chapter; and

(2) none of the following has occurred: (i) the owner has declined to respond to the request for proposals or other solicitation of proposals issued by the Department for the purpose of entering into franchise agreements for the installation, operation and maintenance of public pay telephones within the time period specified in such request for proposals or other solicitation of proposals; (ii) the Commissioner has determined not to propose the award of a franchise to such owner to the Franchise and Concession Review Committee or (iii) the Franchise and Concession Review Committee has determined not to approve the proposed franchise agreement for such owner. Permits issued pursuant to this subdivision shall expire upon the occurrence of any of the foregoing. In the event that the owner is granted a franchise to install, operate, and maintain public pay telephones, such permits shall continue in effect for the term of the franchise.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-38.1

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-38.1 Conversion of Licensed and Interim Registry Public Pay Telephones to Permit Status Following Franchise Award.

(a) **Previously licensed telephones owned by the telephone company.**

(1) In the event that the telephone company is awarded a franchise for the installation, operations and maintenance of public pay telephones, the telephone company may request the issuance of permits for any or all existing telephones owned by such company for which a license previously was issued pursuant to former §19-131 or 19-128 of the Code. Such application shall consist of a letter identifying the precise location and license number of each existing public pay telephone for which the telephone company seeks a permit. Notwithstanding any other provision of this subchapter, no fee shall be charged for a permit pursuant to this subdivision. Any existing public pay telephone for which the telephone company does not seek a permit shall be removed by the telephone company no later than sixty days following the award of such franchise and, if not so removed, shall be subject to removal pursuant to §23-408 of the Code. Failure to remove shall also be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(2) The Commissioner shall issue permits requested pursuant to this subdivision no later than ninety days following the award of the franchise unless: (i) within sixty days following the award of the franchise, the Commissioner has objected to the continued maintenance and operation of an existing public pay telephone upon the basis that such continued maintenance and operation would be inconsistent with the provisions of Local Law Number 68 for the Year 1995, or would not be in compliance with the provisions of this chapter or of any Federal or State

regulatory authority having jurisdiction over the provision of public pay telephone service, and (ii) such conditions have not been cured within the time specified by the Commissioner. The telephone company shall remove all existing public pay telephones for which a permit has not been granted pursuant to this paragraph on or before the one hundred twentieth (120) day following the date the franchise is granted and, if not so removed, such telephones shall be subject to removal pursuant to §23-408 of the Code and shall be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(b) **Telephones owned by companies other than the telephone company.**

(1) No later than thirty (30) days following the award of a franchise to an owner other than the telephone company, such owner may apply for the issuance of permits for those public pay telephones identified in a registry submitted pursuant to subchapter B of this chapter (i) for which the Commissioner made no objection or an objection was cured within the time required by the Commissioner, and (ii) which were not otherwise in violation of any provision of §6-41 of this chapter which is applicable to such public pay telephones under §6-40 of this chapter or of the wiring rules under §6-43 of this chapter; provided all the annual interim occupancy fees have been paid for the public pay telephones in such registry. Any such public pay telephone for which such owner does not apply for a permit shall be removed by the owner within sixty days following the award of the franchise, and if not so removed, shall be subject to removal pursuant to §23-408 of the Code and shall be deemed a violation for purposes of subdivisions (a) and (c) of such section.

(2) An owner who has submitted an application pursuant to paragraph (1) of this subdivision (b) shall not be required to remove the public pay telephone to which such application relates unless and until the earlier of the following has occurred; (i) the owner fails to timely cure a condition specified in a notification provided by the Commissioner or (ii) the application for a permit for such telephone is denied. Any such public pay telephone shall be removed within thirty days of an occurrence described in this paragraph and, if not so removed, shall be subject to removal pursuant to §23-408 of the Code and shall also be deemed a violation for purposes of subdivisions (a) and (c) of such section.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-38.2

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-38.2 Moves to the Curb.

(a) **Request for move to curb.** A holder of a public pay telephone permit which was granted pursuant to §6-38.1 of this chapter (or the owner of a public pay telephone registered pursuant to subchapter B of this chapter, if such owner holds a public pay telephone franchise from the City and a permit application pursuant to subdivision (b) of §6-38.1 of this chapter for such payphone has been submitted to DoITT and is pending, excluding such public pay telephones registered pursuant to paragraph (a)(2) of §6-24) may change the location of such public pay telephone, without applying for a new permit, provided that:

(1) the permittee submits a "Request for Move to Curb," in a form to be specified by the Commissioner, accompanied by a filing fee of three hundred ninety-five dollars ($395);

(2) the proposed new location will be along a straight line running from and perpendicular to the street nearest the existing location of such public pay telephone and ending at the existing location of such public pay telephone (the "Move to Curb Path") unless no other application is pending for the affected block-face, in which case the public pay telephone may apply for any curbside location, on the same block-face, in front of the same address;

(3) notice of such "Request for Move to Curb" is provided to the Department of Transportation, and the applicable Community Board, in the same manner as notice of an application for a new permit is to be provided under this chapter;

(4) after the proposed change the applicable public pay telephone will be in compliance with all of the provisions of subchapter D of this chapter, including without limitation those provisions (such as, for example, subdivisions (f) and (j) of §6-41) as would not be applicable to such public pay telephone if it were to remain at its original location or, if such proposed new location would not be in compliance with the provisions of subchapter D of this chapter, the proposed new location could be brought into compliance with subchapter D of this chapter by a six (6) inch lateral alteration of the proposed new curb side location along an axis perpendicular to the "Move to Curb Path" along which the public pay telephone installation is proposed to be moved; and

(5) the Commissioner, after reviewing any comments received from the entities described in the preceding paragraph (3), determines, in his or her discretion, that such change would be in the best interest of the City and confirms such determination by the issuance of a written approval of the Request for Move to Curb.

(b) **Consolidation option.** For valid applications or agreements pursuant to this section received prior to the effective date of this amendment, if a Request for Move to Curb would be subject to denial by reason of noncompliance with subdivision (j) of §6-41 of this chapter, then the owner of the telephone or telephones with respect to which a Request for Move to Curb is being submitted shall, in lieu of utilizing the location required under paragraph (a)(2) of this §6-38.2, have the option of:

(1) entering into an agreement with an owner (the "curb line owner"), of an existing curb line public pay telephone installation located on the same block as the applying owner, which installation contains less than the maximum number of public pay telephones permitted under this chapter. Pursuant to such an agreement, the applying owner and curb line owner would operate public pay telephones in a joint installation at the existing curb location (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)); or

(2) entering into an agreement with another owner who also seeks to move a public pay telephone installation on the same block to the curb line, pursuant to which agreement the two owners would operate public pay telephones in a joint installation in which each public pay telephone (and the overall installation) would be authorized under paragraph (a)(2) of §6-38.2 of this chapter (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)); or

(3) submitting to the Department Requests for Move to Curb for two or more of the applying company's public pay telephone installations located on the same block, pursuant to which the owner would operate such public pay telephones in a joint installation in which each public pay telephone (and the overall installation) would be authorized under paragraph (a)(2) of §6-38.2 of this chapter (provided that the result of such consolidation would be compliance with subdivision (j) of §6-41 of this chapter, and that such joint installation would comply with all other conditions to, and requirements for, approval of a Request for Move to Curb (including, without limitation, submission of the appropriate form and fee and approval by the Commissioner)).

(c) **Timetable.** (1) The Commissioner shall issue a form of "Request for Move to Curb" within ten (10) business days of the effective date of this §6-38.2, which form the Commissioner may amend from time to time.

(2) All Requests for Move to Curb properly and fully filled out and submitted within ninety (90) days of the effective date of this §6-38.2 ("Initial Requests") will be reviewed by the Department, and will be approved or denied within twelve months of the effective date of this §6-38.2, provided that such twelve month date shall be subject to extension by order of the Commissioner.

(3) The order in which the Department reviews Initial Requests will not be related to the order of submission of

such Initial Requests. All Requests for Move to Curb which do not qualify as Initial Requests under the preceding paragraph (2) shall be reviewed by DoITT after all Initial Requests have been reviewed.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Subd. (a) par (1) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) par (1) amended City Record Oct. 5, 2004 §3, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Subd. (a) par (2) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (a) par (3) amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (b) open par amended City Record Feb. 16, 2006 §18, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-39

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*8 CERTIFICATION

SUBCHAPTER C*5 PERMITS FOR PUBLIC PAY TELEPHONES

§6-39 Removal of Telephones by the Department and Disposition of Removed Telephones.

(a) Any public pay telephones not removed by a permittee in compliance with an order of the Commissioner pursuant to this chapter shall be subject to removal pursuant to §23-408 of the Code, and failure to so remove shall also be deemed a violation of subdivisions (b) and (c) of such section.

(b) Any telephone removed pursuant to this chapter that is not claimed by its owner within thirty (30) days of removal shall be deemed abandoned pursuant to §23-408 of the Administrative Code. All abandoned public pay telephones may be sold at public auction after having been advertised in the City Record and the proceeds paid into the general fund or such abandoned telephones may be used or converted for use by the Department or by another City agency. A public pay telephone shall be released to the owner upon payment of the costs of removal, repair and restoration work, storage, and any fees for any administrative expense or expense of additional inspections incurred by the Department as a result of the violation, or, if any action or proceeding for the violation is pending in a court or before the Environmental Control Board, upon the posting of a bond or other form of security acceptable to the Commissioner in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation. If the owner does not claim a public pay telephone that has been removed, the owner shall still be liable for said costs.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (b) amended City Record Feb. 16, 2006 §19, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

5

[Footnote 5]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. Note Statement of Basis and Purpose: Local Law Number 68 for the Year 1995 takes effect on March 1, 1996 and provides for the permitting of public pay telephones in New York City and authorizes the Commissioner of the Department of Information and Technology and Telecommunications to promulgate rules for the implementation of the permitting requirements and other requirements governing the installation, operation and maintenance of public pay telephones.

40 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX A*9 APPLICATION TO INSTALL AND MAINTAIN A PUBLIC PAY TELEPHONE (PPT)

APPENDIX A*9 APPLICATION TO INSTALL AND MAINTAIN A PUBLIC PAY TELEPHONE (PPT)

Application Type: New Site _____ Move-to-the-Curb _____ Add-On _____ Public Safety _____

A. Full Name of Company: _____

A. Company Address: _____

A. Company Telephone #: _____

A. Company FAX #: _____

A. Company Web-Site and/or E-mail address: _____

B. Location of Proposed PPT:

B. Street Address(1): _____

B. Street Address(1): Building # Street Name Borough

You must provide the actual building # of the on-street of proposed PPT.

B. Cross Street: _____ Cross Street 2

_____

B. Side of Street (N, S, E, or W) _____ Odd or Even Side _____

B. Curbside: _____ Building Line: _____

B. Medallion # (if applicable): _____

B. Mounting Type: Pedestal _____ Wall _____ Other _____

B. Enclosure Type:

B. None _____ Small _____ Small Booth _____ 3/4 Booth _____

B. Enclosure Model: _____

B. Operator Service Provider: _____

B. Do you intend to advertise?: Yes _____ No _____

B. If "Yes", Name of Media Representative: _____

B. Is the PPT located in a Historic District or on a sidewalk adjacent to a Landmark?

Yes: _____ No: _____

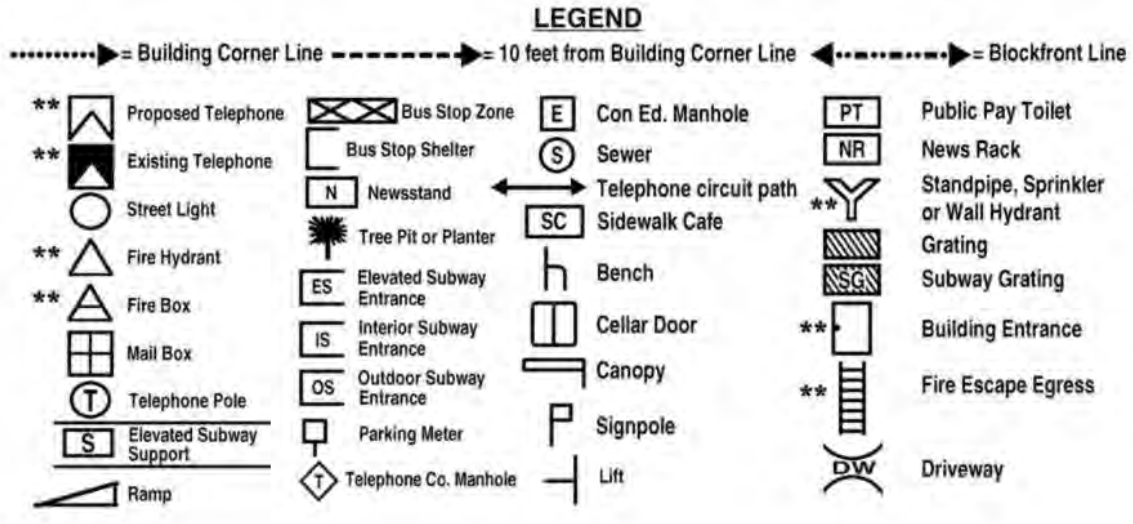
B. Is the PPT site located in a Special Assessment District (SAD) with public pay telephone user B. rights?

Yes: _____ No: _____

B. If Yes, Name and Telephone # of SAD: _____

C. PLEASE NOTE: A Street Opening Permit may be required from the City of New York, C. Department of Transportation

C. You must complete the diagram indicating the proposed PPT installation area using the icons provided on the legend below. You must also indicate distances from all street furniture on the building line or the curb line to the proposed Public Pay Telephone(s) including distance from curb for curbside installations. You must indicate the length of the entire blockfront.



Applicant Authorized Personnel Print Name and Title Applicant Authorized Personnel Signature Date

D. Applicants are advised that a Public Pay Telephone shall be installed, operated and maintained in compliance with all provisions of Federal, State and local law, rules and regulations.

Applicant must complete the attached locational diagram of this form indicating the proposed PPT installation area using the icons provided in the legend. Applicant must indicate the distances, in feet, from all street furniture on the block front of the proposed Public Pay Telephone.

The applicant shall maintain all required clearance from street furniture as set forth in Chapter 6 of Title 67 of the Rules of the City of New York (the "Payphone Rules") and clearance of water mains and their appurtenances required by the Bureau of Water Supply Standards, and shall comply with all applicable law, rules and regulations. The siting rules for Public Pay Telephones are located primarily at §6-41 of the Payphone Rules. The applicant agrees to assume the cost for removal of any and all of their facilities that would interfere with the repair, maintenance and/or replacement of underground facilities.

E. The Applicant agrees that any Permit issued hereunder is subject to all applicable laws and regulations of the City of New York. This permit shall be subject to revocation as provided in the Rules of the Commissioner of the Department of Information Technology and Telecommunications as set forth in the Payphone Rules, and as provided in all other applicable provisions of Federal, State and local law, rules and regulations.

F. In addition to the street diagram, you must submit a 17" × 14" enlargement of the block the blockfront is part of, clearly showing addresses, side streets, compass directions, and intersection corners for the blockfront in question. This enlargement should be made using a Sanborn Map from the Building and Property Atlas, 20th Edition 1999, or any definitive successor thereto, or any other authority the City may specify in the future.

G. If the blockfront is irregular and does not conform to a standard grid format (i.e. four corners per intersection) you must submit a scale diagram containing the information found on the standard diagram plus a Sanborn enlargement, or any definitive successor thereto, or any other authority the City may specify in the future.

H. All Sanborn enlargements, or any definitive successor thereto, or any other authority the City may specify in the future, must indicate the proposed PPT location(s), the location of all other PPT's on the blockfront, and all PPT's within

50 feet of the corner for all corners of the intersection relating to the blockfront in question.

Department of Information Technology and Telecommunications

75 Park Place, 9th Floor, New York, NY 10007

For Office Use Only: Application Number: Date:

PERMIT APPLICATION ADDENDUM

BLOCK LENGTH: _____ feet

NO (in violation) YES (in compliance) RULE/REGULATION

1 Sidewalk clearance of 8 ft. or $^1/_2$ the width (whichever is greater)

2 Installation will not obstruct crosswalk or curb cuts

3 Installation will not interfere with passage or vision of vehicular traffic

4 Installation will not interfere with operation of fire escape

5 Installation will not impede free use of any means of egress

6 Not less than 15 ft. from elevated or outdoor Subway entrance (unless at building-line)

7 Not less than 5 ft. from interior Subway entrance

8 Not less than 15 ft. radius from fire hydrant

9 Not less than 5 ft. radius from standpipe, siamese, connecting sprinkler, or wall hydrant

10 Not less than 3 ft. from Subway grate, grating or manhole at curbline

11 Not less than 15 feet from sidewalk cafe

12 Not less than 15 ft. from bus stop zone (unless at building-line)

13 Not less than 15 feet from news stand (unless attached or at building-line)

14 Not less than 15 ft. from a public pay toilet (unless attached or at building-line)

15 Not less than 5 feet from a bench at curbline

16 Not less than 10 feet from a driveway (unless at building-line)

17 Not less than 5 ft. from a canopy

18 Not less than 4 feet from mailbox at curbline

19 Not less than 4 ft. from traffic or street light

20 Not less than 4 ft. from parking meter

21 Not less than 3 ft. from fire box

22 Not less than 3 ft. from news rack or box at curbline (Unless attached)

23 Not less than 3 ft. from grating (cellar door), impedes the opening at building line, or directly across from building entrance or cellar door

24 Not less than 3 ft. from tree pit or planter at curbline

25 Not less than 50 ft. from another PPT

26 Not less than 10 ft. from extended building line at corner of intersecting streets

27 Not more than 1 PPT installation of one payphone on a sidewalk that is equal to or less than 100 ft.

28 Not more than 2 PPT installations (maximum of 4 PPT's) on a sidewalk that is more than 100 ft. and less than 300 ft.

29 Not more than 2 PPT installations (maximum of 6 PPT's) on a sidewalk that is more than 300 ft. and less than 600 ft.

30 Not more than 3 PPT installations (maximum of 9 PPT's) on a sidewalk that is 600 ft. or more

31 Not more than 1 installation of a PPT 50 ft. from corner boundary of any street corner at an intersection

32 Not less than 3 ft. from traffic sign or sign pole

33 Not less than 4 ft. from traffic or street light

34 Not less than 5 ft. from the entrance or end of a wheel chair ramp or lift

35 Not more than 4 PPT installations at intersection

36 Not installed on pavement other than concrete, or installed on concrete pavement with other than 4 x 4 or 5 x 5 flags

37 Not less than 10 ft. from corner (Within the Corner Quadrant)

38 Will not impede pedestrian traffic

39 Will not affect the structural integrity of vault or sewer

40 Not more than 3 PPT's installed on a single pedestal

NO (in violation) YES (in compliance) REQUIRED PHOTOS TO BE ENCLOSED

Proof that sidewalk is Not Distinctive Sidewalk

Proof that PPT is more than 50 ft. from another PPT installation

If within an intersection, a Photo(s) taken from a distance of more than 50 feet from every side and corner of the intersection showing the area covered by a 50 foot radius of the corner

Photos of entire sidewalk area of the proposed "move-to-the-curb" location from front-on, left, and right (total of 3 pictures)

Photo(s) of specific PPT(s) "Moving-to-the-Curb" (for Move-to-Curb Applications)

Additional Required Attachments

Attach a map if the proposed address/location is Protective Pavement as designated by the City of New York Department of Transportation. This information can be found at:

< http://www.ci.nyc.ny.us/html/dot/html/permits/stpermit.html>

Type of Zone of proposed address/location (i.e. commercial, residential, etc.):
_____

Attach a zoning map. This information can be found at: < http://www.ci.nyc.ny.us/html/dcp/html/zone.html>

Department of Information Technology and Telecommunications

75 Park Place, 9th Floor, New York, NY 10007

AFFIDAVIT

State of New York }

County of _____} ss:

_____, being duly sworn, deposes and says:

Insert Name of Affiant

1. That he or she is the _____ of _____, 1. That he or she is the Title of Affiant Name of Business Entity

1. a corporation, partnership, LLC, sole proprietorship or other business entity duly organized and 1. existing under and by virtue of the laws of the State of _____, and that he or she 1. makes this affidavit knowingly and understands the contents, data and facts requested herein.

2. That _____ is a franchise-candidate or has received a franchise 2. Name of Business Entity

2. to operate public pay telephones on, over and under the inalienable property of the City of New York.

3. That _____ will install this PPT at the exact location described in this application; 3. Name of Business Entity

4. That _____ will possess a valid permit or valid permits as required 4. Name of Business Entity

4. by the City's Department of Transportation ("DOT"), or any other applicable agency, prior to the 4. construction, installation and operation of this PPT;

5. That based upon knowledge and investigation, _____ did personally 5. Name of Business Entity

5. or via its agent inspect the site to determine that all DoITT siting requirements, including but not 5. limited to §6-41 of Title 67 of the Rules of the City of New York and the siting self-certification 5. form in this application, have been met;

6. That based upon knowledge and investigation, _____ did personally 6. Name of Business Entity

6. or via its agent check the zoning requirements for this PPT site and did truthfully reproduce them in 6. this move-to-the-curb application;

7. That based upon knowledge and investigation, _____ did personally 7. Name of Business Entity

7. or via its agent check that this PPT will not be installed on a distinctive sidewalk, as defined in 7. §2-02(f) of Title 34 of the Rules of the City of New York;

8. That based upon knowledge and investigation, _____ did personally 8. Name of Business Entity

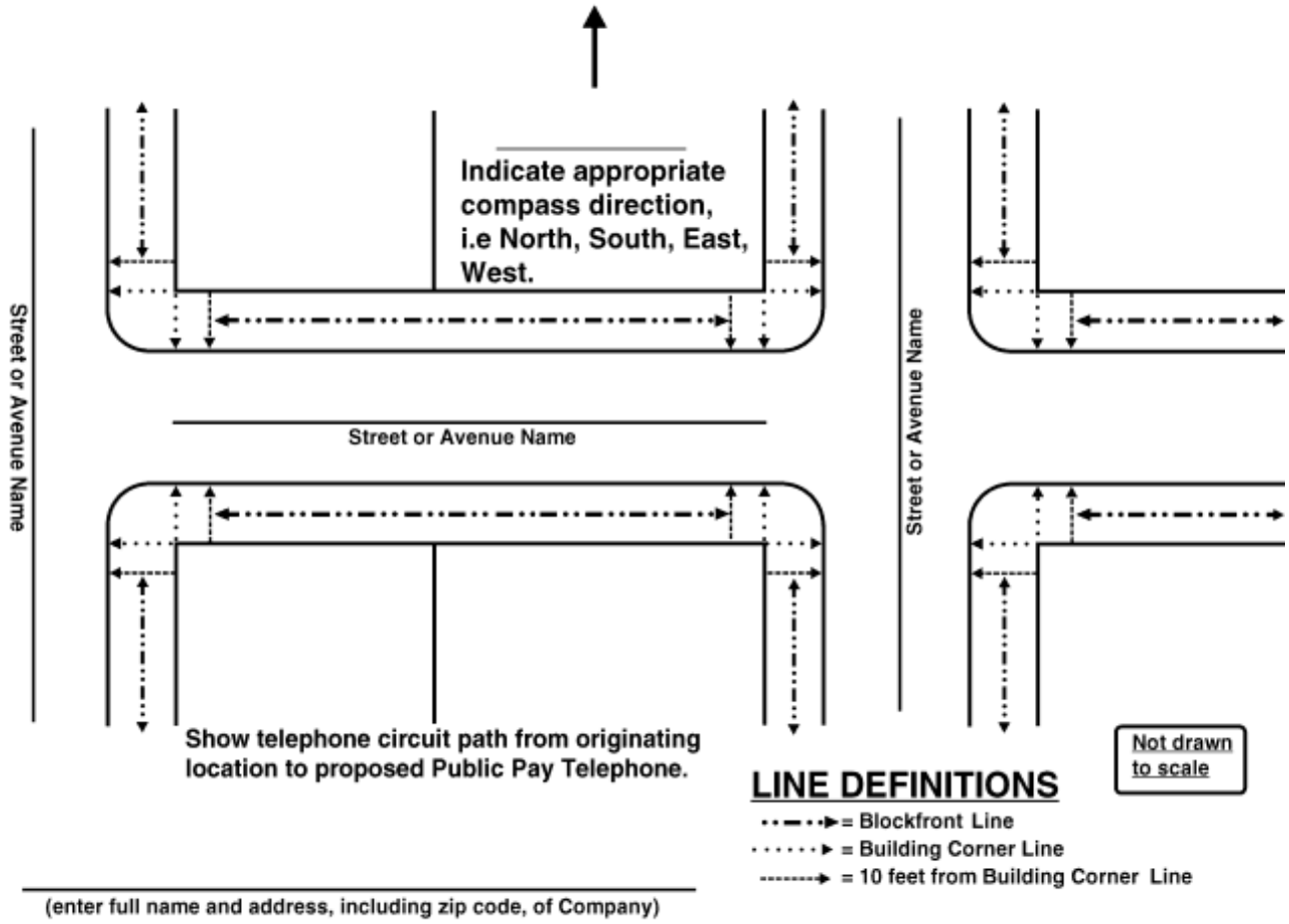
8. or via its agent truthfully and in good faith fill out this move-to-the-curb application;

Signature of Affiant

Subscribed and sworn before me this _____ day of _____, 2000.

Signature of Notary Public

Notarial Stamp/Seal



FOOTNOTES

9

[Footnote 9]: * Appendix A repealed and added City Record Feb. 16, 2006 §20, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

41 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

CONSENT FORM AND CERTIFICATION

I, _____ am a commercial lessee of the building (other property) located at _____ (address) and do hereby consent to permit _____ (name and address of company) to gain access via conduit or other opening (specify) at the position described below on the property identified herein and to enter onto such property for such purpose and for such inspection and maintenance of said telephone as shall thereafter be necessary, provided that: _____ (list any conditions, such as time period, etc.) I hereby certify that I am authorized by the owner or agent of such building or other property to grant permission for access via a conduit or other opening described herein. I further certify that on _____ (date), I notified said owner _____ (name of owner) or notified the agent of said owner _____ (name of agent) at _____ (address of owner or agent) of said consent via certified mail (receipt attached).

Describe each position on the building facade or other property of the conduit or other access for which access is granted.

Position on Property

1.

2.

3.

4.

5.

Signature Address: _____

Sworn before me this _____ day of _____, 19 ____

_____ .

Notary

FOOTNOTES

10

[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-40

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-40 Applicability.

(a) A public pay telephone shall comply with the requirements set forth in this subchapter provided, however, that the provisions of subdivision (d), subparagraphs (i), (ii), (vii), (viii) and (x) through (xxiv) of paragraph (e)(2), and subdivisions (f) through (n) of §6-41 of subchapter D shall not apply to the following:

(1) a public pay telephone permitted pursuant to this chapter that was previously licensed pursuant to former §19-131 or 19-128 of the Code; or

(2) a public pay telephone permitted pursuant to this chapter installed prior to March 1, 1996 that was listed on an interim registry pursuant to the provisions of subchapter B of this chapter and that has not been objected to by the Commissioner pursuant to §6-24 of this chapter.

(b) A public pay telephone for which an interim permit has been issued pursuant to subchapter C of this chapter shall comply with the requirements set forth in this subchapter provided, however, that the provisions of paragraph (j)(2) of §6-41 shall not apply to public pay telephones issued interim permits prior to June 26, 1998.

(c) A public pay telephone that is not in compliance with the provisions of this subchapter shall be in violation thereof and the owner of such telephone shall be subject to the penalties set forth in §6-02 of this chapter (and the grant by the Commissioner of a permit for a public pay telephone, whether under §6-38, §6-38.1, §6-31 or otherwise, shall

not be deemed to be a waiver of such required compliance or to immunize an owner from such penalties).

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) open par amended City Record Feb. 16, 2006 §21, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

FOOTNOTES

10

[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

6

[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

43 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-41

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-41 Siting and Clearance Requirements.

(a) **Pedestrian passage.** Sidewalk clearance must be maintained so as to ensure a free unobstructed pedestrian passage of eight feet or one-half the width of the sidewalk, whichever is greater. For building line public pay telephones, sidewalk clearance shall be measured perpendicularly from the curb line to a point on the public pay telephone installation in closest proximity to the curb line. For curb line public pay telephones, sidewalk clearance shall be measured perpendicularly from the building line to a point on the public pay telephone installation in closest proximity to the building line.

(b) **Crosswalks and sight lines.** Pay telephone installations shall not obstruct or interfere in any manner with curb cuts or crosswalks and shall not interfere with free, unobstructed passage and unobstructed lines of sight for vehicular traffic.

(c) **Fire escapes and building access.** (1) A public pay telephone may not be located where it will interfere with the normal operations of a fire escape or where it will obstruct or impede the free use of any means of egress required by the Building Code.

(2) A public pay telephone shall not be located in a manner that prevents a cellar door from opening to its fullest extent.

(3) A public pay telephone installed subsequent to March 1, 1996 shall not be placed at the curb directly opposite a building entrance or cellar door.

(4) A public pay telephone installed subsequent to March 1, 1996 at the building line, shall not be installed within three feet of a building entrance or cellar door if such installation would result in users of such public pay telephone blocking such building entrance or standing on such cellar door.

(d) **Underground vaults and sewers.** A public pay telephone shall not be installed in such a manner so as to affect the structural integrity of an underground vault or sewer.

(e) **Distances required.**

(1)(i) A public pay telephone shall not be installed on or over the sidewalk or other inalienable property of the City immediately parallel to a landmark site, as such term is defined in §25-302 of the Code. If a public pay telephone was installed parallel to a landmark site prior to September 16, 1998, the owner may receive a permit but shall be subject to the rules of the Landmarks Preservation Commission regarding advertising in historic districts whether or not the landmark site is located in a historic district.

(ii) No permit under this chapter shall be granted for any site within an "Historic District", as that term is defined in §25-302 of the Code unless the permit application conforms to the Landmarks Preservation Commission rules concerning public pay telephones.

(2) Unless otherwise authorized by the Commissioner in writing, public pay telephones shall not be installed within:

(i) 3 feet of a traffic sign;

(ii) 4 feet of a traffic light;

(iii) 5 feet of the end of a ramp of an entrance to or an exit from a wheelchair lift;

(iv) 15 feet of the entrance way of an outdoor or elevated subway entrance, except where the public pay telephone is attached to, or is immediately adjacent to, the building and clear pedestrian passage is maintained;

(v) 5 feet from a subway station entrance;

(vi) 15 foot radius of a fire hydrant and, unless otherwise authorized by the Commissioner in writing, within 5 feet of a standpipe and/or sprinkler, siamese connection or wall hydrant;

(vii) 3 feet from a subway grate, utility hole cover, or transformer vault;

(viii) 15 feet of a sidewalk cafe;

(ix) 15 feet of a bus stop zone unless the public pay telephone is attached to a bus stop shelter within the zone or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;

(x) 15 feet of a newsstand unless the public pay telephone is attached to such newsstand or is installed at the building line and does not obstruct pedestrian passage of the sidewalk;

(xi) 15 feet of a public pay toilet unless the public pay telephone is attached to such public pay toilet or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;

(xii) 5 feet of a bench located at the curbline;

(xiii) 10 feet of a driveway unless the public pay telephone is attached to or immediately adjacent to a building immediately adjacent to such driveway;

(xiv) 5 feet of a canopy as defined in §19-124 of the Code;

(xv) 4 feet of a mailbox located at the curbline;

(xvi) 4 feet of the base of a street light;

(xvii) 4 feet of a parking meter;

(xviii) 3 feet of a fire box unless otherwise approved in writing by the Commissioner; (xix) 3 feet of a news rack located at the curbline unless the public pay telephone is attached to the newsrack;

(xx) 3 feet of a newsbox located at the curbline;

(xxi) 5 feet of a tree (without a tree pit);

(xxii) 3 feet of a grating if the public pay telephone is installed at the building line and does not cover the grating or in any way impede the opening of the grating;

(xxiii) 3 feet of a signpole;

(xxiv) 3 feet of the edge of a tree pit or planter located at the curbline.

(xxv) 4 feet from a "Pedestal Structure," (herein defined as any telecommunications utility box, cabinet, or enclosure and related construction, such as foundations, that is located, in whole or in part, above grade and within the public right-of-way of a public street and/or sidewalk, except when such structure is attached to a utility pole or other legal street furniture installation);

(xxvi) 8 feet from a bicycle rack; and

(xxvii) 4 feet of any sidewalk encumbrance not specifically enumerated herein.

(f) **Required distance from other public pay telephone.** A pedestal or other structure that holds a public pay telephone shall be located at least fifty (50) feet from any other such pedestal or structure on any one block face. For purposes of this subdivision "block face" shall mean that portion of the sidewalk on one side of a street which is between the building line and the curb and which is between the boundaries of the corner area at either end of the block. For purposes of this subdivision, "corner area" shall mean the area bounded by extending the intersecting building lines to the curb and the lines to the curb between the two extended building lines. Nothing in this section shall be construed to prohibit the placement of a public pay telephone at the building line within ten (10) feet of a corner, provided however that the placement of such public pay telephone on such building line leaves an adequate unobstructed passage for pedestrians.

(g) **Distance from corner and curb.** A public pay telephone installed after April 13, 1995 at the curbline shall not be located within the corner quadrant and the edge of such installation closest to the curb shall be at least 18 inches, but no more than 24 inches, from the curb. For purposes of this subdivision, "corner quadrant" shall mean the area from ten (10) feet on either side of the corner area in conformity with the definition of corner quadrant found in Executive Order No. 22 of 1995. For purposes of this subdivision, "corner area" shall have the same meaning as such term is defined in subdivision (f) of this section.

(h) **Location of public pay telephones in relation to other street furniture or street conditions.** No public pay telephone or public pay telephone pedestal shall be installed in a location: (1) where the City of New York or any

agency thereof has issued a permit for a location-specific street vending installation; (2) for which a revocable consent has previously been issued that would be inconsistent with installation of a public pay telephone or public pay telephone pedestal; or (3) where other street furniture that has been previously authorized is to be located, except that permitted public pay telephones may be affixed or attached to such authorized street furniture pursuant to an agreement between the public pay telephone service provider and the Department, any other City agency with jurisdiction over such street furniture, and the owner of such street furniture.

(i) **Measurements from enclosures.** If a public pay telephone is mounted in an enclosure, the distances set forth in subdivision (e) of this section shall be measured from the side of the enclosure nearest the object in question.

(j) **Number of public pay telephones at any location.** (1) There shall be no more than three (3) public pay telephones installed on a single pedestal or in an in-line configuration on a sidewalk between two street corners in the City. There shall be no more than one wall-mounted public pay telephone in any one location. There shall be a distance of fifty (50) feet between any two installations of public pay telephones. An in-line configuration shall not exceed a footprint of 35" × 120".

(2) There shall be no more than the following number of public pay telephones on any sidewalk between two street corners in the City;

(i) on any such sidewalk that is one hundred (100) feet or less, a maximum of: one public pay telephone installation that includes no more than one public pay telephone;

(ii) on any such sidewalk that is more than one hundred (100) feet and less than three hundred (300) feet, a maximum of: two public pay telephone installations that contain in the aggregate no more than four public pay telephones;

(iii) on any such sidewalk that is at least three hundred (300) feet but less than six hundred (600) feet, a maximum of: two public pay telephone installations that contain in the aggregate no more than six public pay telephones;

(iv) on any such sidewalk that is six hundred (600) feet or more, a maximum of: three public pay telephone installations that contain in the aggregate no more than nine public pay telephones.

(3) There shall be no more than one public pay telephone installation within fifty (50) feet of any corner area of any street corner. "Corner area" shall have the same meaning as set forth thereof in paragraph (f) of this section. Notwithstanding any other provision of this paragraph, in no event shall a public pay telephone be installed where such installation would result in more than four public pay telephone installations within fifty feet of the corner area at any intersection with any number of corner areas. This paragraph shall not apply to public pay telephones installed or issued a notice to proceed by the Department prior to June 26, 1998.

(4) Nothing in this subdivision shall be construed to (i) require the removal of a public pay telephone that has been registered with the Department pursuant to §6-21 of this chapter; or has been issued a permit by the Department prior to the effective date of these rules; or was operational pursuant to a license issued pursuant to the provisions of former §19-128 or 19-131 of the Administrative Code of the City of New York; or (ii) prohibit the installation of a public pay telephone where a notice to proceed has been issued by the Department prior to June 26, 1998.

(5) No permit or request for relocation is to be granted under this chapter if a permit or Request for Move to Curb, notice to proceed or conditional permit has previously been granted which would result in the installation of a public pay telephone that would render the installation sought impermissible under this subdivision (j) or subdivision (f) of this §6-41, unless a waiver is granted by the Commissioner under subdivision (n) of this §6-41 or unless such previously granted permit or Request for Move to Curb, notice to proceed or conditional permit has been terminated or revoked.

(k) **Dimensions of telephones with enclosures.** (1) If mounted in an enclosure, such enclosure should, in the case

of a telephone installed and activated prior to March 1, 1996, be no greater than 35" × 44", and for a public pay telephone installed and activated after March 1, 1996, such enclosure shall be no greater than 35" × 44" for one (1) telephone, no greater than 35" × 88" for an in-line installation of two (2) telephones, and no greater than 35" × 120" for an in-line installation of three (3) telephones.

(2) Except as otherwise waived in writing by the Commissioner, such enclosures shall not exceed 90" in height excluding a mast which shall not exceed 90" in height. (Unless waived in writing by the Commissioner, the total height of the combined public pay telephone and service mast shall not exceed 180"). At no time shall the overhead communications service wiring with a drip loop be less than ten (10) feet above the ground.

(l) **Sidewalks of a distinctive design.** A public pay telephone shall not be installed on, or result in the destruction, damage or removal of any part of, a sidewalk of a distinctive design. For purposes of this subdivision, "sidewalk of a distinctive design" shall include a pavement of granite, slate, bluestone or brick and a sidewalk constructed and approved pursuant to §2-02(f) of Title 34 of the Rules of the City of New York.

(m) A public pay telephone must be installed upon a paved surface, unless such telephone is attached to the facade of building or other structure.

(n) **Waiver by Commissioner.** If the Commissioner determines that a public pay telephone is necessary in a location in order to provide for public health and safety, and one or more provisions set forth in this chapter cannot be satisfied, he or she may waive such provisions of this chapter as may be necessary to permit the installation of a public pay telephone. In no case, however, shall a public pay telephone installation be placed within eighteen (18) inches of a curb or within ten (10) feet from a corner or constitute an impediment to pedestrian traffic or interfere with the function of fire escapes or the unimpeded passage of building inhabitants.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Section renamed City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (d) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (e) par (1) amended City Record Feb. 16, 2006 §22, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (1) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (e) par (2) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (e) par (2) subpar (v) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (vii) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xvi) amended City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxv) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxvi) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (e) par (2) subpar (xxvii) added City Record Feb. 16, 2006 §23, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Feb. 16, 2006 §24, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Dec. 23, 1998 eff. Jan. 22, 1999.

Subd. (f) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (f) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (g) amended City Record Feb. 16, 2006 §24, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (h) added City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (i) relettered (formerly (h)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (j) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2] (Note internal renumbering by Law Department per Charter §1045.)

Subd. (j) relettered (formerly (i)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (j) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (j) par (3) amended City Record Feb. 16, 2006 §25, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (k) relettered (formerly (j)) City Record Jan. 13, 1997 eff. Feb. 12, 1997.

Subd. (l) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (l) relettered and amended (formerly (k)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (m) added City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (m) relettered (formerly (l)) City Record Jan. 13, 1997 eff. Feb. 12, 1997. [See T67 §6-24 Note 1]

Subd. (n) amended City Record Feb. 16, 2006 §26, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (n) relettered (formerly subd. (m)) City Record Aug. 17, 1998 eff. Sept. 16, 1998.

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-42

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-42 Sign Required.

Each public pay telephone location, single or multiple, shall have a sign in a form prescribed by the Commissioner, and consistent with the Rules and Regulations promulgated by the New York State Public Service Commission, installed so that it is visible within the enclosures for such telephone. Such sign shall:

(a) be of dimensions no less than 2" by 5"

(b) include Americans with Disabilities Act ("ADA") symbols indicating that the telephone is equipped to assist hearing impaired persons;

(c) be in compliance with requirements of the ADA;

(d) clearly and legibly identify the owner of the public pay telephone;

(e) clearly and legibly identify the New York State Public Service Commission certified Operator Service Provider of such telephone in the same typeface and in a size that is no larger than that used to identify the owner of the telephone;

(f) contain the following statement: "To register a complaint with the City of New York, call 311."; and,

(g) clearly and legibly identify the public pay telephone using the PPT identification number issued by DoITT.

HISTORICAL NOTE

Section amended City Record Feb. 16, 2006 §27, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-43

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-43 Installation and Maintenance.

(a) **Workmanship.** (1) Materials, workmanship and wiring shall comply with all applicable provisions of Title 27 of the Administrative Code and the National Electrical Safety Code.

(2) Where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation requires that such work be done by an electrician, only a licensed electrician shall perform such work.

(b) **Materials.** Materials shall be of good and durable quality, in accord with all applicable codes, and all work shall be performed without unreasonable disruption of public streets.

(c) **Installation.**

(1) Every public pay telephone installation (as such is defined in §6-01 of this chapter) shall be maintained in a condition of good repair. All painted surfaces must receive a fresh coat of paint at least once a year.

(2) Broken or missing lights, broken or unattached or missing advertising panels or other components of a public pay telephone enclosure shall all be repaired or replaced, as applicable, within seventy-two hours, of being damaged, provided however that upon notice from the Department, such disrepair shall be remedied within forty-eight (48) hours.

(3) Dangling or protruding wires, whether originating from the enclosure or the pedestal or conduit of a public pay telephone installation, shall be repaired within forty-eight (48) hours of the commencement of such state, provided however that upon notice from the Department, such disrepair shall be remedied within twenty-four (24) hours.

(4) The pedestal(s) upon which a public pay telephone enclosure is mounted shall be kept free of holes or missing or unattached plates, or missing or unattached or broken mounting brackets, screws or bolts or other attachments, covers, panels or associated equipment, and upon notice of non-compliance with this subdivision (c), the pedestal(s) shall be repaired within forty-eight (48) hours.

(5) Notwithstanding the foregoing, any dangerous condition shall be fixed as soon as possible but no later than twenty-four hours. For the purposes of this subdivision (c), the definition of "dangerous condition" shall include, but not be limited to, a public pay telephone installation and associated equipment possessing jagged or sharp edges, improperly grounded or insulated or bare telephone or electrical wires carrying electrical current, and deteriorated or damaged sidewalk flags.

(d) **Telephone service.** A public pay telephone shall be maintained such that upon proper payment, a call can be completed. For example, a public pay telephone that could not complete a call to a location or instrument using "anonymous call rejection" on a caller ID or caller number identification device would be in violation of this subdivision (d) of §6-43 and of subdivision (b) of §6-05 of this chapter.

(e) **[Reserved]**

(f) **Wiring.** (1) Overhead communications wiring between the building line and the curb is prohibited.

(2) Overhead communications wiring that crosses the street is prohibited except where such wire is part of a common or existing wire path with other non-public pay telephone communication wire or other telephone communication wire.

(3) Overhead communications wiring of any kind is prohibited in the Borough of Manhattan. In all other Boroughs, except as otherwise waived in writing by the Commissioner, wiring for public pay telephones shall be installed underground wherever the City has required electric cables be installed underground. Existing ducts, conduits, or other facilities such as above ground terminal boxes on the sidewalk served by underground facilities or other facilities subject to any and all reciprocal agreements between the dial tone provider and another party shall be utilized. No property belonging to a party other than the dial tone provider may be used without the express written consent of such party and the Department.

(4) All aerial communication wiring must be at least 10 feet off the ground at all times.

(5) All overhead public pay telephone communication wires following an existing or common communication wire path will be transferred by the dial tone provider to an alternate means of dial tone connection when such existing communication wire path is discontinued or removed or when the City requires electrical cabling be installed underground at the public pay telephone installation location.

(6) Where overhead wiring is generally permissible, new overhead public pay telephone communication wires between a public pay telephone and a pole with existing facilities will be permitted if the distance between such telephone and pole is thirty-five (35) feet or less in a straight line, and telephone service in that location is provided via aerial means.

(7) Where overhead wiring is generally permissible and the distance between a public pay telephone and a pole with existing facilities is greater than thirty-five (35) feet, the dial tone connection may be underground to the pole.

(8) All underground communication wiring shall be installed through conduits except where underground ducts are

used.

(9) All aboveground communication wiring from a pedestal or wall mount to a source of dial tone located on private property shall be installed through weather resistant conduits using appropriate sealant.

HISTORICAL NOTE

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

Subd. (a) amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (c) added City Record Feb. 16, 2006 §28, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (c) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (d) added City Record Feb. 16, 2006 §28, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (d) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (e) repealed City Record Dec. 17, 1996 eff. Jan. 16, 1997.

Subd. (f) amended City Record Feb. 16, 2006 §29, eff. Mar. 18, 2006. [See T67 §6-02 Note 2]

Subd. (f) amended City Record Aug. 17, 1998 eff. Sept. 16, 1998. [See T67 §6-04 Note 2]

Subd. (f) added City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Subd. (f) par (iii) amended City Record Jan. 13, 1997 eff. Feb. 12, 1997.

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

46 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-44

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-44 Compliance with Americans with Disabilities Act.

A franchisee shall comply with the provisions of the Americans with Disabilities Act and the regulations promulgated thereunder, contained in Appendix A to 28 CFR Parts 35 and 36, and any additional applicable Federal, State and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

HISTORICAL NOTE

Section amended City Record Nov. 22, 1996 eff. Dec. 22, 1996. [See T67 §6-04 Note 1]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

47 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-45

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-45 Compliance with Other Authority.

(a) As provided in subdivision (d) of §6-30 of this subchapter, notwithstanding any other provision of this chapter, a permit shall not be issued for a public pay telephone pursuant to this chapter unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

(b) A public pay telephone shall be sited, installed, operated and maintained in compliance with all applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

HISTORICAL NOTE

Section amended City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

Section added City Record Mar. 8, 1996 eff. Apr. 7, 1996. [See Subchapter C footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-46

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-46 Timing of Installation.

A permit granted under this chapter shall be considered automatically revoked if a public pay telephone is not installed and activated within 90 days of the date such permit is granted, subject to extension of such date by the Commissioner, acting in his or her discretion, upon a showing by the permittee that despite good faith efforts to complete installation within such 90 day period, circumstances beyond the control of the permittee (not including the financial capacity of the permittee) are preventing completion of such installation.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-47

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-47 City Authority to Operate.

If pursuant to any provision of this chapter, a public pay telephone, or group of public pay telephones, becomes subject to removal by the Department, and if the location of such payphone or group of payphones is consistent with the requirements of subchapter D of this chapter, then the Department shall have the authority to, in lieu of removal of such payphone or payphones, operate (directly or through a designee) such payphone or payphones for the account of the City and/or make such payphone or payphones available for purchase or lease from the City by holders of public pay telephone franchises granted by the City. The Department, or its designee, purchaser or lessee, shall be authorized to make any necessary or convenient modifications to such payphone or payphones to secure the service provided from such payphone or payphones and the revenues generated from such payphone or payphones.

HISTORICAL NOTE

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]
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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

50 of 50 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

67 RCNY 6-48

RULES OF THE CITY OF NEW YORK

Title 67 Department of Information Technology and Telecommunications

APPENDIX B*10 CONSENT FORM AND CERTIFICATION

SUBCHAPTER D*6 REQUIREMENTS FOR PUBLIC PAY TELEPHONES

§6-48 Fee Nonrefundable.

The three hundred ninety five dollars ($395) fee required to accompany any permit application or Request for Move to Curb under this chapter and the thirty-five dollar ($35) fee required to accompany any application for an Extension to a Notice to Proceed shall be nonrefundable.

HISTORICAL NOTE

Section amended City Record Oct. 5, 2004 §4, eff. Dec. 4, 2004 per the Notice of Adoption. [See T67 §6-06 Note 1]

Section added City Record May 31, 2000 eff. June 30, 2000. [See Chapter 6 footnote]

FOOTNOTES

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[Footnote 10]: * Appendix B added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C

footnote]
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[Footnote 6]: * Subchapter added City Record March 8, 1996 effective April 7, 1996. [See Subchapter C footnote]

1 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-01 Applications.

(a) All applications shall be made on Form W704A provided by the Department.

(b) **Content.** Every application made hereunder shall set forth, in addition to other information, the following:

(1) Name and address of organization.

(2) Names and addresses of the officers and directors of the organization.

(3) The method of solicitation.

(4) Specific dates for which permission is sought and localities and places of solicitation.

(5) Purpose or object of solicitation.

(6) The estimated expenses of the proposed solicitation.

(7) Whether or not any commissions, fees, wages or emoluments of any character are to be extended in connection with such solicitation and if so, the rates or amounts.

(8) A verified statement of all monies, donations or financial assistance of any kind collected during the previous fiscal or calendar year, the expenditures connected therewith, and all other disbursements thereof.

(9) Copy of any contract made in connection with the solicitation shall be attached to the application.

(c) **Certified resolution of authority to be filed.** Every organization, society, association or corporation applying for such license shall file with its application a copy of the resolution adopted by such organization, society, association or corporation authorizing the application, certified to as correct by the proper officer thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

2 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-02 Eligibility.

(a) **In general.** Licenses will not be issued to individuals but only to non-profit groups, organizations, associations and corporations. All officers and directors of applicant organization must be of good character and bear a reputation in the community satisfactory to the Commissioner.

(b) **Veterans organizations.** Applications for public solicitation may not be submitted by posts, branches, garrisons or other units or subdivisions of organizations having county or state offices unless specifically authorized in writing by the State or County office. National offices of organizations may also apply.

HISTORICAL NOTE

Section in original publication July 1, 1991.

3 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-03 Licensee Prohibitions, Duties and Limitations.

(a) **Proceeds-certain uses prohibited.** No license shall be granted where any part of the proceeds collected insures to the benefit of any individual officer or member of the organization, society, association or corporation, directly or indirectly, except that reasonable compensation may be paid for services rendered.

(b) **Gambling and games of chance.** No gambling device, lottery, raffle, drawing or game of chance shall be permitted at or used in connection with any function for which a license to solicit has been granted.

(c) **Misstatements.** Any misstatement made in the application or to the Commissioner for the purpose of obtaining a license may be deemed sufficient cause for refusing such license or for revoking any license granted.

(d) **Terms of license to be fulfilled.** Licenses granted hereunder shall specify the period during which they shall remain in force, the name of the organization, society, association or corporation to which granted, the manner in which the solicitation shall be carried on, the location of the solicitation, and the purpose of the solicitation. Licensees and all solicitors, collectors or other representative of the licensees, shall be required to produce on demand, the original license or a photographic copy. The license shall not be valid unless it bears the signature of the Commissioner, Deputy Commissioner or Counsel to the Department of Social Services.

(e) **Commissioner's right to audit.** The Commissioner reserves the right to make or cause an audit to be made at any time of the accounts of any organization, society, association or corporation, to which a license has been issued at any time, and if such audit discloses any irregularity it shall be sufficient reason for the revocation of the license and for the denial of future licenses to the same group or its successors or affiliates. The Commissioner reserves the right to

examine books and records of applicants for licenses.

(f) **Non-transferability of license.** No license granted in accordance with these regulations shall be transferable.

(g) **Filing of statement of receipts and expenditures.** The holder of the license shall file with the Department of Social Services, within ten (10) days after the expiration of the period for which it was granted, a statement of the receipts and expenditures in detail, sworn to by a proper officer.

(h) **Ten day rule.** Completed application form for solicitation of funds must be filed with the Department of Social Services at least ten (10) days before the effective date of the requested solicitation.

(i) **Sale of tickets or advertising.** (1) License issuance limited to three month period prior to activity. In connection with the sale of tickets or advertising for fund-raising purposes a license will not be issued earlier than three months before the scheduled date of the proposed affair.

(2) **Submissions of samples.** It is required that organizations licensed by the Department of Social Services who conduct campaigns for contributions and by sale of tickets must furnish the Department with samples of letterheads, appeal letters and literature to be used in connection with such campaign and where the sale of tickets is licensed, the Department must be furnished with samples of the tickets in the different price denominations.

(j) **Proof of consent to use of private property.** Within the discretion of the Commissioner, he may require applicant for license to furnish proof of consent to solicitation on any privately-owned property.

(k) **Prohibition against soliciting while in military uniform.** No licensees, or representatives of a licensee, shall wear the uniform or any part thereof, of the Army, Navy, Coast Guard or Marine Corps of the United States, or of the National Guard or State Guard of the State of New York, in connection with such solicitation of funds.

(l) **Removal of solicitation container at license expiration.** Where public solicitation is conducted by placement indoors of containers or receptacles, such solicitation must terminate upon the expiration date of the license. No container or receptacle may be displayed after such expiration date, and all containers and receptacles must be promptly removed by or returned to the licensee.

(m) **Street solicitation.**

(1) **Soliciting prohibited in certain places.** No license granted hereunder shall be construed to permit or allow the holder, thereof, to solicit contributions along the line of march of any parade or at any block party or street fair, unless such solicitation is specifically authorized by the license. No solicitation is to be conducted on any public conveyance, platform, stairway, station or any appurtenance of a subway or elevated railway.

(2) **Solicitation by children prohibited.** The use of children under eighteen (18) years of age in solicitation under authority of license issued by the Department of Social Services is prohibited.

(3) **Three-day limitation.** Licenses for street solicitation shall be limited to a period of three days within a six-month period. In instances involving inclement weather, a licensee may request and receive substitute days. The last week in May shall be reserved for veteran organizations only who will be permitted to conduct both indoor and outdoor solicitation by the sale of poppies during this time.

(4) **Distance required between solicitors.** There shall be at least the distance of one City block between persons soliciting funds on public streets under license from the Department of Social Services.

(5) **Manner of soliciting.** Solicitors shall approach pedestrians in a quiet, conversational tone. Solicitors shall not shout or otherwise conduct themselves in a manner offensive to passersby and shall not carry signs.

(6) **Solicitors shall not block entrances.** Solicitors shall not block the entrance to any dwelling, store or other place of business, nor impede in any way the free ingress to or egress from any dwelling, store or other place of business.

(7) **Solicit near the curb line.** Solicitors shall station themselves nearest the curb line.

HISTORICAL NOTE

Section in original publication July 1, 1991.

4 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 1 GRANTING OF LICENSES FOR PUBLIC SOLICITATION

§1-04 Violations.

Any violation of these regulations or of any ordinance or law may result in the revocation of the license and in denial of future licenses to the same organization, its successors or affiliates.

HISTORICAL NOTE

Section in original publication July 1, 1991.

5 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-01 General Statement.

(a) The laws of the state of New York require that New York City be responsible for the burial of poor people who reside here. New York City meets these requirements in two ways. For those deceased persons who do not have a friend or relative who is willing to arrange for burial, the deceased is interred in New York City's burial ground (known as "Potter's Field"). For those deceased persons who have a friend or relative who wishes to arrange for burial through a funeral director, New York City will help pay burial expenses if there is no legally responsible relative living with the deceased at the time of death or prior to the institutionalization of the deceased who is financially able to pay for the burial. These regulations explain when and how much New York City will pay for the burial expenses when the funeral was arranged by a friend or relative.

(b) Benefits will be provided in an amount not to exceed $800 if burial expenses do not exceed $1400. The only exclusions from this $1400 are the cost of the burial plot on behalf of the deceased and the grave opening or the cost of cremation and any costs required by the cemetery. All other costs will be included in determining the total costs of the burial expenses for purposes of determining the $1400 limitation set forth above. Where a burial follows a cremation, only the cost of the cremation shall be excludable. Applications for benefits must be made in person by the individual who authorized the funeral unless the application is made by an "organizational friend" as defined in §2-02 "Friend" (2). Reasonable proof of indigency of the deceased and the legally responsible relative must be supplied. Proof of burial expenses must be supplied in order for payment to be authorized. The details of these requirements are described in the following sections.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record June 26, 1995 eff. July 26, 1995. [See T68 §2-04 Note 1]

6 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-02 Definitions.

Applicant. An applicant is a relative or friend of the indigent decedent who has authorized or provided for the burial of an indigent person, has signed the prescribed form seeking assistance for burial expenses, and has hand-delivered the signed application to personnel of the Burial Claims Unit. A legally responsible relative who resided with the deceased prior to the deceased's institutionalization or at the time of death must be the applicant, for that deceased individual. Except for Organizational Friends, as defined in §2-02 "Friend" (2), applicants or their authorized representatives must appear in person at the Burial Claims Unit of the Human Resources Administration to apply for benefits.

Application. An application is an action by which a person indicates his or her desire to receive a grant for burial expenses through signing and hand-delivering the prescribed form to personnel of the Burial Claims Unit.

Authorized representative. An authorized representative means the person designated by the friend or relative to make funeral arrangements and/or to apply on the applicant's behalf. Proof of representation shall consist of a statement signed by the applicant designating the person as the authorized representative.

Burial expenses. Burial expenses mean any cost related to the funeral or burial of the deceased which are enumerated in the written itemization statement or crematory/cemetery charge bill. The value of items or services donated by a funeral director, funeral home, or cemetery shall not be considered burial expense.

Friend. A friend may be either an (1) individual; or (2) a charitable and/or religious organization.

(1) **Individual friend.** A friend is any person who, prior to the decedent's death, maintained such regular contact with the deceased as to be familiar with the decedent's activities, health and religious beliefs. Such "friend" shall present a sworn, notarized statement stating the facts and circumstances upon which the claim that he is a "friend" is based. The following persons are not "friends" of the deceased for purposes of these regulations: Funeral directors and employees of the funeral home through whom funeral arrangements have or will be made; Public Administrators, acting in their official capacity; hospital administrators and hospital employees acting in their official capacity; administrators and employees of all facilities set forth in Article 28 of the Public Health Law acting in their official capacity.

(2) **Organizational friend.** A charitable and/or religious organization may qualify as an "organizational friend" if the New York City Department of Social Services gives advance approval of such status based on the organization's satisfactorily meeting the following criteria:

(i) The organization's history and purpose, as demonstrated by its articles of organization, are charitable and/or religious in nature;

(ii) Part of the organization's function is to bury indigent persons;

(iii) The organization's principal place of business is in New York City;

(iv) The organization is non-profit and tax-exempt pursuant to §501(c)(3) of the United States Internal Revenue Code;

(v) No board member or officer of the organization is a funeral home director with which the organization does business;

(vi) A substantial amount of the organization's funding for burial purposes comes from private sources; and

(vii) Annually, the organization makes its books and records available to the New York City Department of Social Services for inspection, review and audit, if necessary.

Funeral directing. Funeral directing means the care and disposal of the body of a deceased person and/or the preserving, "disinfecting and preparing by embalming or otherwise, the body of a deceased person for funeral services, transportation, burial or cremation; and/or funeral directing or embalming as present known, pursuant to §3400(d) of the Public Health Law or in accordance with the statutes of the funeral director's home state.

Funeral director. A funeral director is a person to whom a valid license as such has been duly issued, pursuant to §3400(a) of the Public Health Law or licensed in accordance with the statutes of the funeral director's home state.

Funeral establishment. A funeral establishment means a single physical location, address or premises devoted to or used for the care and preparation of a body of a deceased person for disposition and for mourning or funeral ceremonial purposes, pursuant to §3400(g) of the Public Health Law or licensed in accordance with the statutes of the funeral establishment's home state.

Funeral firm. A funeral firm means an individual, partnership, corporation or estate representative engaged in the business and practice of funeral directing, pursuant to §3400(j) of the Public Health Law or licensed in accordance with the statutes of the funeral firm's state.

Indigent. An indigent is an individual who was in receipt of public assistance or Supplemental Security Income ("SSI"); or if less than age 65 was eligible for public assistance; or if age 65 and over, was eligible for SSI.

Legally responsible relative. A legally responsible relative is legally obligated to furnish support for the following persons: a spouse; a son or daughter under the age of twenty-one years and a step-child under the age of twenty-one years. A person is not chargeable with the support of an adopted child of his or her spouse, if the child was adopted after

the adopting spouse is living separate and apart from the non-adopting spouse pursuant to a legally recognizable separation agreement or decree under the domestic relations law, and the spouses remain separate and apart after the adoption.

New York City. New York City means the Human Resources Administration of the City of New York, which is the local social services district for the City of New York.

The Burial Claims Unit. The Burial Claims Unit is the unit of the Human Resources Administration which accepts applications, processes applications, and authorizes grants for burial expenses based on applications for burial grants, including applications by relatives or friends for grants for a decedent who is a discharged member of the armed forces of the United States, a minor child or parent of any such member of the armed forces, or the spouse or unremarried surviving spouse of any such member of the armed forces. The decedent shall be a legal resident of New York City at the time of death. The Burial Claims Unit of the Office of Constituent and Community Affairs of the New York City Human Resources Administration is located at 151 Lawrence Street, 5th Floor, Brooklyn, New York 11201.

Public assistance. Public assistance means the receipt of Home Relief or Aid to Dependent Children. Payments of emergency assistance to families or emergency home relief shall not be considered public assistance.

Relative. Relative includes all relatives of the deceased through first cousin or the spouse of any such relative. Specifically included are the spouse, child, grandchild, parent, grandparent, brother, sister of the deceased and their spouses.

Supplemental Security Income. Supplemental Security Income, or SSI, means the receipt of SSI or additional state payments.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Applicant amended City Record Jan. 30, 2008 §1, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Application amended City Record Jan. 30, 2008 §1, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

New York City amended City Record Jan. 30, 2008 §2, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

CASE NOTES

¶ 1. Charter §197-c has no legal requirement for a superseding restrictive declaration to be included in order for a land use application to be complete. Charter §197-c(a), (b), (c), (i) and the implementing regulations, 62 RCNY 2-02(a)(5)(iv), (v) do not make the filing of a superseding restrictive declaration a prerequisite to deeming an application complete for ULURP notification and processing purposes. Coalition against Lincoln W. v. City of New York, 208 AD2d 472 affirmed, 86 NY2d 123 [1995].

7 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-03 Application for Financial Assistance for Burial Expenses.

(a) An application shall be submitted to the Agency within sixty days of the date of death by the relative or friend of the deceased or an authorized representative.

(b) An application shall be made by personal appearance at the Burial Claims Unit.

(c) The applicant shall receive a prescribed application form. An applicant shall complete the application form before any assistance shall be authorized. All documents required to verify eligibility for and the amount of benefits must be submitted within sixty days of the application for benefits. Failure to provide such documents within the time set forth in this section shall result in a finding of ineligibility and a denial of the application except as stated in this subdivision (c). An applicant who cannot submit the documentation within sixty days of the date of application shall inform the Burial Claims Unit in writing of the delay and the reason therefor within the sixty-day period. Extensions of this period shall be granted at the discretion of the Burial Claims Unit.

(d) Applications on behalf of indigents who were in receipt of public assistance from the Human Resources Administration of New York City or Supplemental Security Assistance at the date of death may be made prior to burial and eligibility for a grant for burial expenses will be determined within two working days of application. If the applicant is a legally responsible relative, (s)he must also be a recipient of public assistance from the Human Resources Administration of New York City or Supplemental Security Assistance. If eligibility is found, the applicant shall be issued a pre-approval letter addressed to the funeral director acknowledging eligibility subject to the monetary and documentation requirements set forth in these regulations.

Authorization for payment of burial expenses shall be deferred until receipt of all documentation. Such documentation must be supplied within 60 days of application except as described in §2-03(c). The Burial Claims Unit will make every effort to authorize payment within two weeks of receipt of all necessary documentation in cases under this subdivision (d).

(e) Application on behalf of indigents who were not in receipt of public assistance from the Human Resources Administration of New York or Supplemental Security Assistance at the date of death are subject to further eligibility verification. The Burial Claims Unit will make every effort to make a final determination of eligibility for payment within thirty days of receipt of all necessary documentation required in this regulation.

Applicants who authorized the burial of public assistance or SSI recipients and who did not apply before burial as allowed in subdivision (d), are subject to this subdivision (e).

(f) Relatives and friends of a decedent who was a discharged member of the armed forces of the United States, a minor child or parent of any such member of the armed forces, or the spouse or unremarried surviving spouse of any such member of the armed forces shall apply to the Burial Claims Unit for a grant for burial expenses. The decedent shall be a legal resident of New York City at the time of death. The discharge status of the decedent shall be confirmed by the United State Department of Veterans Affairs.

HISTORICAL NOTE

Section amended City Record Jan. 30, 2008 §3, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. 68 RCNY 2-03, which prescribes a 60-day limitation period for filing an application for reimbursement of an indigent person's burial expenses pursuant to Social Services Law §141 and 18 NYCRR 352.7(N) is invalid because neither of these two sections provide for a 60-day limitation period for burial grant eligibility and an administrative agency cannot create a Statute of Limitations by regulation when not authorized by enabling legislation. Mtr. of Mayer v. Kaladjian, 161 Misc. 2d 883 [1994].

8 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-04 Eligibility of Applicants for a Grant for Burial Expenses.

(a) The Burial Claims Unit may authorize payment of a sum of up to $900 toward burial costs. No payments shall be authorized if the burial expenses, exclusive of the costs of cremation or of the burial plot and the grave opening, exceed $1700.

(b) The value of any resources or income which were available to the deceased shall be deducted from the $800 burial allowance in determining the amount the applicant shall receive.

(c) The value of any resources or income available to the legally responsible relative who resided with the deceased shall be deducted from the $800 burial allowance in determining the amount the applicant shall receive.

(d) A legally responsible relative who resided with the deceased shall be eligible for a burial allowance only if (s)he was financially eligible for public assistance if under age 65, or eligible for SSI if age 65 or over.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §4, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Subd. (a) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

Subd. (b) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

Subd. (c) amended City Record June 26, 1995 eff. July 26, 1995. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1995:

New York Social Services Law §141(3)(a) authorizes local social services districts to set the amount which they will reimburse the relatives or friends of a deceased indigent person for burial of the deceased person. The budget shortfall requires reducing the amount to $800 to achieve savings.

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-05 Verification.

Verification of data supplied on the application form which are pertinent to the determination of eligibility or the amount of the grant toward burial expenses, is an essential element of this investigation.

(a) Documents, personal and collateral interviews, correspondence and conferences are means of verification. The Burial Claims Unit may require verification of all assets and resources that were available to the deceased at the time of death.

(b) All applicants shall be required to provide the Burial Claims Unit with the following documentation:

(1) A Certificate of Death, which shall contain the name, date of death and place of death of the person to whom it relates and shall be properly certified by the local registrar, or a Certificate of Spontaneous Termination of Pregnancy. The Certificate of Spontaneous Termination of Pregnancy must be prepared in accordance with Article 203 of the New York City Health Code.

(2) Two itemized funeral bills, indicating funeral charges, services and merchandise provided. The funeral bills shall be signed by the funeral director before a notary public.

(3) A true copy of the written Itemization Statement required to be furnished in accordance with §78.1 of the regulations of the New York State Department of Health. Such statements shall include, but not be limited to, the price of the funeral together with the price of each item of service and merchandise actually furnished. True copies of the statement, pursuant to said regulations, shall be consecutively numbered and maintained in numerical order at the

funeral establishment. The itemization statement shall bear the dated signature of both the applicant and the funeral director.

(4) A cemetery charge bill, if any.

(5) Such other documentation as may be required by New York City, whether in the possession of the applicant, the funeral director, or the cemetery.

(c) The funeral director shall be required to complete a prescribed form affidavit, provided by the Burial Claims Unit, where payment was made directly to the funeral home. The form shall include, but not be limited to, the following provisions:

(1) An attestation that the funeral bill is ordinary and customary.

(2) A statement that the funeral director understands that (s)he shall be subject to the penalties set forth in §3450 **et seq.** of the Public Health Law, if he knowingly makes a false statement or misrepresentation, or practices fraud or deceit in his business or in the business of the funeral firm.

(3) A statement that the funeral bill has either been paid or is due and owing.

(4) A statement that the funeral director agrees that (s)he will furnish any additional documentation kept in the normal course of business which the Burial Claims Unit may require to evaluate eligibility for and amount of benefits.

(d) A personal interview may be required with the fiduciary of the estate of the decedent. New York City shall assess the availability of assets in the deceased's estate to pay the burial expenses. In the event that the executor fails or refuses to cooperate in providing information about the assets and resources available to the deceased at the time of death, eligibility for a grant for burial expenses shall be indeterminable and the application shall be denied. In the event that a lawsuit has been initiated by the fiduciary of the estate, documents shall be obtained to identify all available funds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Subd. (b) open par amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09

Note 1]

Subd. (c) amended City Record Jan. 30, 2008 §5, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-06 Residence.

The decedent shall be a resident of New York City or a recipient of public assistance or medicaid from the Department of Social Services of New York City or the application shall be denied.

In the event an indigent person dies in New York City but resided in another county in New York State, an application for a grant for burial expenses shall be rejected. The applicant shall be advised to apply to the Department of Social Services in the county of decedent's residence for assistance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

11 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-07 Continuing Liability of the Legally Responsible Relative.

In accordance with State law, the relatives who survive the deceased who would have been responsible for his/her support are responsible for the expenses of his/her burial to the extent they are able to pay. New York City may take appropriate action to enforce this obligation in order to reimburse any expenses incurred by New York City in accordance with these regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

68 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-08 Fair Hearing.

(a) Fair hearing is the procedure by which an applicant for a grant for burial expenses may appeal to the Commissioner from certain decisions or actions of the Burial Claims Unit and have a hearing thereon, in accordance with Section 22 of the Social Services Law and Title 18, Section 358.1 et seq. of the Official Compilation of the Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.).

(b) An applicant for a grant for burial expenses shall be entitled to a fair hearing on the following grounds:

(1) denial of an application for a grant for burial expenses;

(2) failure to determine the applicant's eligibility;

(3) inadequacy in amount or manner of payment of burial expenses;

(4) any other grounds affecting the applicant's entitlement to a grant for burial expenses or the amount thereof.

(c) As set forth in Title 18, Section 358 of the N.Y.C.R.R., request for a hearing must be made within 60 days of the adverse action which is being appealed. Failure to appeal within this 60 day period will result in a denial of the Fair Hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Jan. 30, 2008 §6, eff. Feb. 29, 2008. [See T68 §2-09 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 2 BURIAL CLAIMS

§2-09 Application for Financial Assistance for Burial Expenses for Certain Veterans.

Notwithstanding any other provision of law or regulation to the contrary, where a discharged member of the armed forces of the United States, other than a member of the armed forces who was dishonorably discharged, and the discharge status of the decedent has been confirmed with the United States Department of Veterans Affairs, dies in the city of New York without leaving sufficient means to defray his or her funeral expenses and dies without a friend or relative to act as an applicant for the purpose of seeking assistance for burial expenses from the Human Resources Administration.

(a) A veteran's organization may act as an organizational friend for purposes of applying for burial expenses if such veteran's organization has been qualified as an organizational friend by the Human Resources Administration. Approval of such organization as an organizational friend is based on the organization's satisfactorily meeting the following criteria:

(i) The organization's history and purpose, as demonstrated by its articles of organization, are charitable and/or religious in nature;

(ii) Part of the organization's function is to bury indigent veterans;

(iii) The organization's principal place of business is in New York City;

(iv) The organization is non-profit and tax-exempt pursuant to §501(c)(3) or 501(c)(19) of the United States Revenue Code;

(v) No board member or officer of the organization is a funeral home director with which the organization does business;

(vi) A substantial amount of the organization's funding for burial purposes comes from private sources;

(vii) Annually, the organization makes its books and records available to the Human Resources Administration for inspection, review and audit, if necessary.

(b) The Burial Claims Unit may authorize payment of a sum of up to $900 toward burial costs, including the cost of transporting the remains of the veteran to the Calverton National Cemetery.

(i) No payments shall be authorized if the burial expenses, exclusive of the costs of cremation or the burial plot and the grave opening, exceed $1700.

(ii) No payments shall be authorized if the veteran is to be buried in a private cemetery other than in the Calverton National Cemetery.

(iii) The value of any resources or income which were available to the deceased shall be deducted from the $900 burial allowance in determining the amount the applicant shall receive.

HISTORICAL NOTE

Section added City Record Jan. 30, 2008 §7, eff. Feb. 29, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2008:

HRA furnishes public assistance to New York City residents and does so in accordance with State Law and implementing regulations. Pursuant to Social Services Law §141, HRA is authorized to pay a portion of the burial costs of an indigent deceased individual where the burial of such individual has been arranged for by the deceased's relatives or friends, and the payment is in accordance with local rules. Local rules currently appear at Chapter 2 of Title 68 of the Rules of the City of New York.

HRA now proposes to add a new rule and amend the existing rules. The purpose of the new rule and amendments is to authorize HRA's payment of certain burial expenses for discharged veterans, other than those dishonorably discharged, where funeral arrangements for such veterans are made by a veterans organization which qualifies as an "organizational friend." The proposed rule sets forth the requirements that a veterans organization must meet to qualify as an "organizational friend"; provides for payment of a sum up to $800 toward burial costs, including the cost of transporting remains to Calverton National Cemetery; and makes certain technical corrections to the existing rules.

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-01 Purpose.

The purpose of these rules is to establish an evaluation procedure for employment training programs to ensure that training provided in such program shall:

(a) be sufficient to enhance substantially the participants' opportunity to secure unsubsidized employment, or

(b) when coupled with or provided in conjunction with other training or work activities represent part of a comprehensive approach to securing unsubsidized employment for the participants and attaining self-sufficiency.

HISTORICAL NOTE

Section repealed and added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

Subd. (b) amended City Record Apr. 18, 1997 eff. May 18, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that

each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

15 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-02 Definitions.

As used in these rules, the following terms shall have the following meanings: Cohort. A group that includes all public assistance recipients who are or have been enrolled in an employment training program, whose scheduled date of completion of that program is within a specific one-year period, but does not include those recipients who withdrew or were otherwise removed from the program within thirty days of their date of enrollment in the program. Recipients whose original scheduled date of completion would place them within a cohort, but whose date of completion has been rescheduled with the approval of OES, shall not be included in that cohort.

Date of enrollment. The first date upon which a public assistance recipient is scheduled to attend a class at an employment training program.

Department of social services. The New York State Department of Social Services, or any successor agency which is responsible for functions described herein.

Employment training programs. Vocational training programs, literacy programs, job placement programs, and associate's degree or other post-secondary two-year degree granting programs.

OES. The Office of Employment Services of the New York City Human Resources Administration.

OES work-related activity. Any job search, work experience program, on-the-job training program, or other training in which OES requires a recipient to participate pursuant to applicable law and regulations.

Paid employment. Lawful employment for which a person is paid on an hourly, per diem, weekly, biweekly or monthly basis. Paid employment includes full-time employment and part-time employment.

HISTORICAL NOTE

Section repealed and added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

16 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-03 Standards for Evaluating Employment Training Programs.

(a) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a vocational training program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996 and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional

Approval Following Employment Placement Rate Review.

(b) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a literacy program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996, and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

(c) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, a job placement program must meet the following conditions:

(1) (i) It is licensed by the New York State Education Department, or is sponsored by a government agency, and

(ii) It is enrolled with and approved by the New York State Department of Social Services, in accordance with the requirements of that Department.

(2) It furnishes to OES documentation of enrollment, attendance, and satisfactory progress of each public assistance recipient enrolled in its program who is receiving training-related expenses or is receiving an exemption from other OES work-related activities. Such documentation shall be in a form satisfactory to OES.

(3) It shall establish, and report to OES, a scheduled date of completion for each public assistance recipient enrolled in its program. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law. This requirement shall apply with respect to public assistance recipients who enroll on or after May 1, 1996, and to recipients who have enrolled prior to such date and are continuing their studies in the program as of that date.

(4) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

(d) To be approved as an employment training program for which a public assistance recipient may receive training-related expenses, or a full or partial exemption from requirements to participate in other OES work-related activities, an associate's degree or other post-secondary two-year degree program must meet the following conditions:

(1) It is licensed by the New York State Education Department.

(2) It furnishes to OES documentation for public assistance recipient enrollees as to enrollment, attendance, and satisfactory progress and accumulation of credits, as defined by OES procedures.

(3) It furnishes to OES a copy of the school's calendar for the year, and a summary of credit acquisition requirements, on a semester basis, which full-time students must meet in order to obtain a degree within two years.

(4) It establishes, and reports to OES, a scheduled date of completion for each public assistance recipient enrollee. The completion date shall not be later than two years from the date of enrollment of any public assistance recipient, except as may otherwise be required pursuant to applicable law.

(5) If it has been subject to an employment placement rate review, as described in section 3-04 of these rules, it has a current Certificate of Approval Following Employment Placement Rate Review or a current Certificate of Conditional Approval Following Employment Placement Rate Review.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

17 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-04 Employment Placement Rate Review.

(a) Once every six months, an employment training program which has had sufficient public assistance recipient enrollees to form a cohort, as described herein, shall be subject to an employment placement rate review to determine its continued eligibility for approval, as follows:

(1) For vocational training programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. A vocational training program shall pass the employment placement rate review if 40% of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed.

(2) For literacy programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 50. A literacy program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed:

(i) For a review conducted in 1996, 10%;

(ii) For a review conducted in 1997 or thereafter, 15%.

(3) For job placement programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. A job placement program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment

placement rate review is completed:

(i) For a review conducted in 1996, 40%;

(ii) For a review conducted in 1997 or thereafter 50%.

(4) For associate's degree and other post-secondary two-year degree programs, the minimum size of a cohort, as defined in section 3-02 of these rules, shall be 25. An associate's degree program or other post-secondary two-year degree program shall pass the employment placement rate review if the following percentage of persons in the cohort have secured paid employment at any time following their date of enrollment up to the date the employment placement rate review is completed:

(i) For a review conducted in 1996, 25%;

(ii) For a review conducted in 1997 or thereafter, 30%.

(5) Where an institution provides more than one type of employment training program, such as a job placement program and a literacy program, OES shall review such programs separately to determine whether each program is subject to and passes the employment placement rate review standards for the relevant program.

(b) Documentation of placement rate: OES shall consider the following evidence to determine placement rate:

(1) Acceptable documentation of students engaged in paid employment provided to OES by an employment training program or any other person. Employment training programs shall submit such information by the applicable deadline for the cohort review. For each enrollee or former enrollee, such documentation must contain all of the following information:

(i) A recent pay stub, or an original of correspondence from the employer confirming the employment.

(ii) The public assistance recipient's name and social security number.

(iii) The employer's name, address and telephone number.

(iv) The job title, date on which employment started, date on which employment ended (if applicable), and salary, indicating whether it is on an hourly, per diem, weekly, biweekly, or monthly basis.

(2) Information obtained by matching enrollment lists with the New York State Welfare Management System database to identify persons whose cases have been closed or rebudgeted since the date of their enrollment in the employment training program.

(c) As evidence of an enrollee's completion, withdrawal or removal from an employment training program, OES shall accept only a copy of an "Attendance and Satisfactory Progress" roster report that was generated by the appropriate OES unit or office and completed by an appropriate officer of the employment training program.

(d) If, after performing the employment placement rate review, OES determines that an employment training program has not placed the required percentage of public assistance recipient enrollees, it shall send the program a "Notice of Intent to Disapprove." This notice shall include a list of those public assistance recipients whose scheduled date of completion was during the period relevant to the employment placement rate review, for whom OES has not received information confirming paid employment, or the closure or rebudgeting of their case.

(e) An employment training program shall have ten days from the date of the "Notice of Intent to Disapprove" to provide notice to OES that it intends to contest the dis- approval.

(f) An employment training program which has filed notice pursuant to paragraph (e) shall have thirty days from the date of the "Notice of Intent to Disapprove" to submit documentation of additional placements, documentation showing that persons who were included in the placement rate review should not have been included, and a written statement explaining any other reasons why it should not be disapproved. Documentation shall be submitted in accordance with the provisions of subdivisions (b) and (c) of this section.

(g) When the employment placement rate review is complete, and OES has considered any materials timely submitted by an employment training program following its receipt of a Notice of Intent to Disapprove, OES shall determine whether the program shall be approved or disapproved. It shall send a "Certificate of Approval Following Employment Placement Review" to those programs which have passed the review, in accordance with the requirements for passing set forth in subdivisions a through c of this section. It shall send a "Notice of Disapproval Following Employment Placement Review" to all other programs that have been reviewed.

(h) A Notice of Disapproval Following Employment Placement Review shall notify the employment training program that it may submit to OES a "Corrective Action Plan" specifying steps that the program will take to attain the required placement rate, as set forth in subdivision a of this section. If OES determines that the Corrective Action Plan is acceptable, it shall send the program a "Certificate of Conditional Approval". Such Certificate shall not take effect until 90 days after the date of Notice of Disapproval Following Job Placement Review. Until the Certificate of Conditional Approval takes effect, the program shall be suspended. Notwithstanding any provision of this paragraph, a program shall not be suspended based on the results of the first Employment Placement Review of the program following the effective date of these rules, if it has submitted a Corrective Action Plan which has been approved by OES.

(i) A Certificate of Conditional Approval shall remain in effect until the next time an employment training program has undergone an employment placement rate review. While a Certificate of Conditional Approval is in effect, OES shall limit the number of public assistance recipients for whom it approves training-related expenses to participate in the program. The maximum number shall be the greater of: (i) 25 recipients, or (ii) 10% of the number of public assistance recipients whose placement rate was evaluated during the employment placement rate review.

(j) A Certificate of Approval Following an Employment Placement Rate Review shall remain in effect until OES has completed a new employment placement rate review and issued a new Certificate of Approval or a Notice of Disapproval Following Employment Placement Rate Review.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

18 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-05 Disapproval for False or Fraudulent Documentation, Mismanagement, and Failure to Meet State Requirements.

(a) If any employment training program submits falsified or fraudulent documentation to OES, it shall be disapproved immediately.

(b) An employment training program to which the New York State Education Department has issued an Order to Show Cause shall be disapproved immediately.

(c) An employment training program subject to the jurisdiction of the New York State Department of Social Services that fails to maintain its eligibility for enrollment with that Department shall be disapproved immediately.

(d) OES may disapprove a program based on other evidence of fraud or misman- agement.

(e) OES shall provide a written notice to a program that is disapproved setting forth the grounds for disapproval.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

19 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-06 Disapproval for Failure to Submit Documentation of Attendance and Progress.

(a) An employment training program in which public assistance recipients are enrolled shall submit documentation of the attendance and progress of such enrollees to OES on a monthly basis.

(b) Any program that fails to submit such documentation for any month shall receive a Notice of Disapproval for Failure to Submit Documentation of Attendance.

(c) A program that has received such a notice shall not be approved until it has submitted to OES a Corrective Action Plan which has been approved by OES, and ninety days have passed since the date of the notice; provided that OES may waive the ninety day period.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that

each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-07 Standards for Approval of Enrollment and Requests for Training Related Expenses for Public Assistance Recipients.

(a) A public assistance recipient who wishes to enroll in an employment training program, and in connection therewith to receive training related expenses and/or be excused from other OES work-related requirements, shall submit to OES a "School Enrollment Form" that has been completed by an appropriate officer of the employment training program. A public assistance recipient who is enrolled in an associate's degree or other post-secondary two-year degree program shall submit a "School Enrollment Form" at the beginning of each semester.

(b) OES will review and make a determination of whether to approve the request of a public assistance recipient to participate in an employment training activity according to the following criteria and applicable State regulations:

(1) The employment training program must be approved as described in section 3-03, and must not be under suspension for failure to comply with any provision of these rules.

(2) In the case of an employment training program for which OES has granted a conditional approval, a public assistance recipient's request will be approved only if the number of public assistance recipients who have enrolled in the program since the date of issuance of the Certificate of Conditional Approval is below the maximum number allowed as set forth in subdivision i of section 3-04.

(3) If the public assistance recipient has already received training related expenses to attend a total of twenty-four months of training in one or more employment training programs (regardless of whether such twenty-four months were interrupted by any period of time during which the recipient was not enrolled in an employment training program), OES

may, at its discretion, and subject to applicable federal and State law and rules, allow the recipient to continue receiving training related expenses and/or exemption from other work-related activities on condition that the recipient continues to make satisfactory progress; withdraw approval for further training related expenses or a further exemption; or require that the recipient participate in other OES work-related activities while the recipient remains in the program and continues to receive training related expenses. Nothing herein shall be deemed to limit the ability of OES to assign a public assistance recipient to work-related activities, consistent with applicable law.

(4) In the case of a request to continue attendance in an associate's degree or other post-secondary two-year degree program, OES may deny approval to a student who has not accumulated sufficient credits to earn the degree in accordance with his or her scheduled date of completion.

(5) OES may withdraw approval for any recipient who is not attending at least 75% of the scheduled classes or is not making satisfactory progress in the employment training program.

(6) OES may withdraw or deny approval for any recipient to participate in an employment training program or limit the number of hours of participation for which approval will be given to meet state law requirements pertaining to work and employment training activities, including but not limited to participation rate requirements.

(c) Except as otherwise provided pursuant to federal and State law and rules for hardship cases or as a reasonable accommodation for a person with a disability, a public assistance recipient who enrolls in an associate's degree or other post-secondary two-year degree program must attend the program on a full time basis.

(d) Public assistance recipients who enroll in part time or evening employment training programs may be required to participate in concurrent employment related ac- tivities.

(e) [Reserved]

(f) When a public assistance recipient has been receiving training related expenses and/or an exemption from requirements to participate in other OES work-related activities because such recipient has been enrolled in an employment training program, and the recipient does not complete that program by the recipient's scheduled date of completion, OES may, at its discretion, subject to applicable federal and State law and rules, allow the recipient to continue receiving training related expenses and an exemption from other work-related activites on condition that the recipient continues to make satisfactory progress; withdraw approval for further training related expenses or a further exemption; or require that the recipient participate in other OES work-related activities while the recipient remains in the program and continues to receive training related expenses.

(g) When approval is denied or withdrawn pursuant to this section, the recipient shall receive such notice and hearing with respect to such actions as are required pursuant to the rules of the New York State Department of Social Services.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

Subd. (b) amended City Record Apr. 18, 1997 §1 eff. May 18, 1997. [See Note 1]

Subd. (d) relettered and amended (former subd. (e)) City Record Apr. 18, 1997 eff. May 18, 1997.

Former Subd. (d) repealed.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 18, 1997:

The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirement, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment," or, "when coupled with or provided in conjunction with oher training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2). These amendments to the rules of the Human Resources Administration pertaining to employment training programs will clarify the agency's right to disapprove a request by a recipient to participate in an employment training activity and facilitate the agency's ability to require a recipient to engage in concurrent work activities. The amendments will better able the Human Resources Administration to satisfy work participation rates set forth in the Personal Responsibility and Work Opportunity Act of 1996.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-08 Fraudulent Application for Training Related Expenses.

OES shall not approve the application for training related expenses and/or an exemption from other OES work-related activities of a public assistance recipient who knowingly and willingly submits to OES a falsified or fraudulent School Enrollment Form or any other employment training or employment-related document. Such a recipient may be subject to restrictions on eligibility for future employment training activities, and may also be subject to additional sanctions and criminal prosecution. The recipient shall receive such notice and hearing with respect to such actions as are required pursuant to the rules of the New York State Department of Social Services.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards

for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 3*1 EMPLOYMENT TRAINING PROGRAMS FOR PUBLIC ASSISTANCE RECIPIENTS

§3-09 Consequences of Enrollment in a Program that Becomes Disapproved.

(a) In the event that an employment training program becomes disapproved for failure to pass the employment placement rate review, or for the reasons set forth in subdivisions b or c of section 3-05, a public assistance recipient who is already enrolled in the program at the time it is disapproved shall continue to receive training related expenses and/or be excused from other OES work-related activities until the earlier of the recipient's training completion date, or the date when the recipient withdraws from the program or OES withdraws approval pursuant to paragraph 5 of subdivision b of section 3-07.

(b) In the event that an employment training program becomes disapproved pursuant to subdivision a of section 3-05, a public assistance recipient enrolled in such program shall not receive further training related expenses or continue to be excused from other OES work-related activities. Such a recipient may immediately submit a School Enrollment Form for another employment training program.

HISTORICAL NOTE

Section added City Record Apr. 5, 1996 eff. Apr. 5, 1996. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record April 5, 1996 effective April 5, 1996. Note Statement of Basis and Purpose: The rules of the New York State Department of Social Services provide that each social services district is responsible for approval of training programs, and shall develop written training approval standards. 18 NYCRR §385.16(a) & (b). As required by the State rules, the purpose of the standards for training programs created by these rules is to ensure that training provided to recipients of public assistance, for which the recipient receives training related expenses and/or an exemption from other work-related requirements, is "sufficient to enhance substantially the participant's opportunity to secure unsubsidized employment;" or, "when coupled with or provided in conjunction with other training, represent(s) part of a comprehensive approach to securing unsubsidized employment for the participant." 18 NYCRR §385.16(c)(2).

23 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-01 Definitions.

EFAP. EFAP shall stand for the Emergency Food Assistance Program. The City-funded program aids emergency food providers by supplying them with food and administrative funds.

Food provider. A "food provider" shall mean a food pantry, soup kitchen or other similarly constituted non-profit food program which provides food to people based on their having inadequate income to meet their immediate need for food, and which has been certified by the Human Resources Administration to participate in EFAP.

Food pantry. A "food pantry" distributes food packages containing canned and other non-perishable food items which are to be prepared and eaten at home. More than one meal per individual is provided in the food package.

Soup kitchen. A "soup kitchen" serves meals to individuals in a congregate setting or through other direct distribution (i.e., van distribution of meals to homeless in parks and other public places). Typically, one meal per individual is served.

Cycle. A "cycle" is a six month period.

Administration. The "Administration" shall mean the Human Resources Admin- istration.

EFAP Advisory Group. The EFAP Advisory Group shall consist of persons active or concerned with the operation of emergency food programs. The group is chosen by the Administration for advice on the implementation of the

Emergency Food Assistance Program.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-02 [Eligibility].

To be eligible to receive funds from EFAP, each food provider must meet the following eligibility criteria:

(a) no charges or fees may be assessed for the food provided through EFAP; (b) the provider must have sources of food other than the Administration;

(c) the provider must serve a minimum of 100 meals per month;

(d) EFAP food cannot be used to serve an organization's "institutional resident" population. (Residents of institutions are those individuals entitled to at least two meals per day as part of the institutions normal service. Examples: Homeless Shelters, Group Homes, Treatment/Rehabilitation Facilities, etc.);

(e) all EFAP food must be properly and securely stored; it cannot be stored, prepared or distributed from a private home, apartment or other personal residence;

(f) the provider must agree to submit a monthly service report which records the number of individuals served per month.

(g) EFAP food and/or funds cannot be used to supplant funds provided through any government contract to provide meals to a specific population (i.e.: Senior Centers or nonresidential treatment programs with government contracts to provide meals).

(h) the provider shall not require attendance at any religious service or other program activity as a prerequisite for receiving emergency food.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

25 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 4-03 [Certification

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-03 [Certification Requirements].

A food provider must be certified by the Administration. Certification requirements include:

(a) completion of the EFAP Application Form;

(b) satisfaction of the requirements of §4-02 above;

(c) receipt of a site visit by an Administration employee. An Annual recertification visit is also required.

(d) signing an agreement to abide by all EFAP requirements.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

26 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 4-04 [Food

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-04 [Food Allocation and Administrative Funds, Biannual Review].

Each food provider's food allocation and administrative funds shall be determined two times per year.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

27 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 4-05 [Food

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-05 [Food Budget].

The EFAP food budget will consist of two components: a food supplement and a meal budget.

EFAP FoodSupplement	+	EFAP MealBudget	=	Total EFAP FoodBudget

Correspondingly each provider's food allocation may consist of two components: a food supplement (discretionary) and a meal budget.

Food Supplement(Discretionary)	+	Meal Budget	=	A Provider's FoodAllocation

(a) The EFAP food supplement per cycle shall be equal to no more than ten percent of the total EFAP Food Budget. A food supplement may be awarded to a provider based on the recommendations of the EFAP Advisory Group. These funds shall address needs that could not easily be factored into a set formula. It is envisioned that the funds shall be used to provide food money to: underserved communities by giving additional support to current EFAP providers to expand their service or to enable the Administration to recruit new service providers; programs providing services to special populations, e.g., immigrants and people with HIV; and, to fund special projects. The EFAP food supplement shall only be distributed to groups which meet the definition of "food provider" established in §4.01 and which meet the eligibility criteria established in §4.02.

(b) The EFAP meal budget wil be equal to the total EFAP food budget minus the EFAP food supplement.

Total EFAP FoodBudget	-	EFAP FoodSupplement	=	EFAP MealBudget

Each provider will receive a meal budget per cycle based on its number of funded meals. To arrive at a provider's

meal budget, a series of calculations will be made. First, the total number of funded meals for all programs will be calculated by determining the number of meals served per program; determining the number of funded meals per program through the application of the sliding scale, as specified in paragraph (2) of this subdivision; and then adding together the number of funded meals for all programs. The sum of the funded meals for all programs will be divided into the EFAP meal budget yielding the dollar value of each funded meal.

EFAP Meal-Budget ÷ Total Number ofFunded Meals forAll Providers = Dollar Value ofEach Funded Meal

Finally, the number of funded meals for a provider is multiplied by the dollar value of each funded meal providing the provider with its meal budget.

# of Funded Mealsfor Provider × Dollar Valueof EachFunded Meal = A Provider'sMeal Budget

(1) Food providers will continue to report the number of individuals served per month. The new formula will take into account that food pantries provide many meals per individual; while soup kitchens generally serve one meal per individual. The new formula will convert individuals served to meals served according to the following formulae:

The Total # of IndividualsServed in each Soup Kitchenfor Twelve Month Period = Total # of Meals Servedin each Soup Kitchen forTwelve Month Period

The Total # of IndividualsServed in Each Food-Pantry for Twelve MonthPeriod × 3 Meals perIn-dividualServed = Total # of MealsServed in Each Food-Pantry for TwelveMonth Period

(2) The number of meals served per provider will be weighted so that smaller providers receive more money per meal served, while at the same time the formula provides additional money for each meal served, albeit at a declining rate.

All providers will be ranked according to the number of meals served during a twelve month period. Seven meal categories with minimum and maximum number of meals served will be established. The meal categories will be set as follows. First all providers will be sorted according to the total number of meals served within the twelve month period. The smallest ten percent of the providers will set the first category (i.e., the number of meals served by the provider that falls at the tenth percentile will be the maximum number of meals in the first category). The second category will begin with one more meal than the maximum number of meals for the first category. The upper limit of this category will be set at the number of meals served by the provider that falls at the twentieth percentile. The remaining five meal catgories will be set according to similar guidelines with the maximum number of meals included in each category being set at 30%, 80%, 87%, 94% and 100% respectively.

The meals served by a provider are then multiplied by the appropriate meal factor for each category in order to determine the sum total of funded meals for each program.

The following chart lists the percentage of programs within each meal category and the meal factor to be using in calculating the funded meals in each category.

Meal Category	Percent of Programs within category	Meal Factor
1	10%	8
2	10%	4
3	10%	2
4	50%	1
5	7%	.5
6	7%	.25
7	6%	.125

For example if the first three meal categories were:

Meal Category	Meal Factor
0-2,799 meals	8
2,800-4,999 meals	4
5,000-6,699 meals	2

One would determine the total number of funded meals for a provider serving 6,000 meals per year as follows:

2,799 × 8 =	22,392
(4,999-2,800) × 4 =	8,796
(6,000-5,000) × 2 =	2,000
	33,188 funded meals

The total number of funded meals is then multiplied by the dollar value of each funded meal to determine a provider's meal budget.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

28 of 30 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY 4-06 [Allocation of

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-06 [Allocation of Administrative Funds].

Each food provider shall be eligible to receive administrative funds to be used to cover approved operating expenses. Administrative funds shall be allocated in a way that takes into account the fact that soup kitchens generally have greater operating expenses than food pantries.

Administrative funds for each food provider shall be allocated by using their dollars budgeted in the EFAP administrative line. Soup kitchens shall be eligible for twice as much administrative funding as food pantries due to significantly higher non-food costs associated with congregate meal preparation.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

Rules of the City of New York

***** Current through December 2009 ****

68 RCNY

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 4 DISTRIBUTION OF FOOD AND ADMINISTRATIVE FUNDS TO EMERGENCY FOOD PROVIDERS*1

§4-07 [Modifications].

The amount of food and administrative funds allocated to each provider may be changed by the Human Resources Administration for any allocation period, regardless of the above formulae, based on various factors, including, but not limited to:

(a) failure to submit monthly service reports;

(b) submission of inaccurate monthly service reports;

(c) a change in the provider's status from active to on-hold or closed;

(d) a request from the provider that its allocation be reduced.

(e) other factors dictating the need to reallocate funds, including, but not limited to changing demographics or changed demographic projections, or geographic im- balances.

HISTORICAL NOTE

Section added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Aug. 8, 1994 eff. Sept. 7, 1994.

Rules of the City of New York

68 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 68 Human Resources Administration

CHAPTER 5 BILL OF RIGHTS AND RESPONSIBILITIES FOR PERSONS WITH CLINICAL/SYMPTOMATIC HIV ILLNESS OR WITH AIDS

§5-01 Rights of Persons With Clinical/Symptomatic HIV Illness or with AIDS.

(a) **Rights of persons with clinical/symptomatic HIV illness or with AIDS.** All persons with clinical/symptomatic HIV illness or persons with AIDS shall have the right to apply for benefits and services as defined in §21-128(b) of the Administrative Code of the City of New York, and the right to apply for information, referral and assessment services from the Division of AIDS Services and Income Support ("DASIS"). In addition, such persons shall have the following rights:

(1) With certain exceptions provided pursuant to applicable federal, state or local law, regulation or rule, you have the right to confidentiality. Your medical condition cannot be revealed to anyone without your permission. Information you give to DASIS staff will not be released to any individual or organization without your permission except where required by law.

(2) You have the right to receive information about and to apply for a variety of benefits and services including, but not limited to, medically appropriate transitional and permanent housing; Medicaid and other health related services; home care and home health services; personal care services; homemaker services; Food Stamps; transportation and nutrition allowances; housing subsidies, including, but not limited to, enhanced rental assistance; financial benefits; and intensive case management. You shall have the right to receive the benefits and services for which you are found eligible.

(3) If you are homebound (i.e., with physical or mental disabilities, confirmed by medical providers or home care agencies, which prevent you, permanently or temporarily, from visiting the local DASIS service center), you have the

right to a home or hospital visit from a case manager. These visits may be to determine your eligibility for benefits and services, to assist you in applying for benefits and services, or to maintain eligibility for benefits and services.

(4) You have the right to refuse any service.

(5) You have the right to be referred to a community based organization for any service not provided by DASIS.

(6) You have the right to contact a DASIS staff member whenever you need services.

(7) You have the right to receive services from DASIS staff without the payment of gratuities in any form.

(8) You have the right to initiate complaints against DASIS staff.

(9) If you feel that you are being unlawfully discriminated against in any way, you have the right to file a complaint of discrimination with the New York State Division of Human Rights Bias Hotline at (212) 662-2427 or the New York City Commission on Human Rights AIDS Hotline at 1-800-523-AIDS.

(10) You have the right to be treated fairly and with respect and courtesy.

(b) **Additional rights and responsibilities of DASIS clients.** All persons who are deemed eligible pursuant to §21-128, subsection (a)(3) of the Administrative Code of the City of New York, have, in addition to all of the rights of persons with clinical/symptomatic HIV illness or with AIDS, the following additional rights and responsibilities [in subdivisions (c) and (d)]*1 :

(c) **DASIS client rights.** (1) You have the right to have benefits and services provided in a timely manner after your applications for specific benefits and services have been approved. Once applications for benefits and services are complete, the time frames for the delivery of benefits and services are determined by:

(i) Federal law or regulations;

(ii) New York State Social Services Law or regulations; or

(iii) Local Law and the Rules of the City of New York.

If none of the above apply, provision of the benefit or service will be no later than twenty (20) business days following submission of all information or documentation required to determine eligibility.

(2) If accepted for Public Assistance or Food Stamps, you have the right to review your budget. If accepted or rejected for Public Assistance, Food Stamps, Medicaid, home care, or homemaking service, you have a right to an agency conference and to a New York State Fair Hearing with respect to actions taken to deny, reduce, discontinue, or restrict your benefits. Please consult the back of the notice which advises you of the determination of the agency with respect to your request for benefits and please follow the guidelines on the back of the notice with respect to requesting an agency conference or New York State Fair Hearing.

(3) If you are a DASIS client with one or more children in your care or custody, you have the right to receive information and program referrals on child care options, custody planning, and transitional supports, including the availability of standby guardianship, and referral to legal assistance programs.

(4) You have the right to participate with DASIS staff in the development of a service plan.

(5) You have the right to be notified in writing of any change in your case status or in benefits or services provided to you.

(6) You have the right to review your DASIS case record and to dispute any information contained therein.

(7) You have the right to be treated fairly and with respect and courtesy.

(d) **DASIS client responsibilities.** (1) You have the responsibility to apply for all benefits for which you may qualify, including, but not limited to, Public Assistance, Medicaid, Food Stamps, Supplemental Security Income ("SSI"), and Social Security Disability ("SSD"), to provide documentation and information necessary to establish eligibility for such benefits, and to comply with application requirements.

(2) You have the responsibility to maintain your benefits by providing information for recertification, and by reporting changes in your income, address, household composition, or any other aspect of your status that may be a factor in determining your eligibility.

(3) If you have a Public Assistance budget that requires co-payment, you are personally responsible for paying such co-payment. For purposes of this paragraph, a co-payment means a responsibility from income or benefits other than Public Assistance for a certain portion of the cost of services (e.g., rent, utilities, Medicaid spend-down).

(4) You have the responsibility to keep all appointments with DASIS staff, including, without limitation, face-to-face recertification interviews, appointments to consider relocation to housing other than temporary housing, or to give notice of change or cancellation in those appointments.

(5) You have the responsibility to advise DASIS staff of any problems that you may have and to cooperate with DASIS staff to resolve these problems.

(6) Depending on whether or not you qualify for Temporary Housing Assistance and/or Public Assistance, Medicaid, Food Stamps and Services, you have to comply with additional responsibilities as set forth in writing on DSS/HRA form number W-897B (7/97) with respect to your application for Temporary Housing Assistance, and/or SDSS form number SDSS-2921 (Rev. 4/96) and SDSS publication number 4148A (Rev. 1/95) entitled "What You Should Know About Your Rights and Responsibilities" with respect to your application for Public Assistance, Medicaid, Food Stamps and Services.

(7) You have the responsibility to treat DASIS staff with respect and courtesy.

HISTORICAL NOTE

Section added City Record Nov. 7, 1997 eff. Dec. 7, 1997. (Note internal renumbering and designations

by the Law Department per Charter §1045(b)).

FOOTNOTES

1

[Footnote 1]: * Supplied by editor, internal renumbering by law department left this unclear.

69 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 69 Department for the Aging

CHAPTER 1 ADJUDICATIONS

§1-01 Conduct of Adjudicatory Hearings.

New York City Department for the Aging adjudications regarding the fitness and discipline of agency employees, and adjudications conducted pursuant to its Expanded In-Home Services for the Elderly Program, will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer in both types of hearings shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

70 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-01 Meetings.

(a) **Regular Meetings.** (1) The regular meetings of the Board shall be held twice each month at 10:00 a.m. in City Hall, or as otherwise directed by the Board. The Mayor's Office of Contracts, Public Hearings Unit shall prepare and distribute to Board members twice annually a schedule of meetings showing the dates and locations of the regular meetings of the Board for the first and second halves of the calendar year. The Mayor's Office of Contracts, Public Hearings Unit, shall provide Board members notice of any change in a date shown on a schedule at least thirty calendar days prior to the meeting to which the change relates.

(2) Applications for the release of property located in the boroughs of Manhattan, Queens and Staten Island shall be considered at the first regular meeting of each month. Applications for the release of property located in the boroughs of Brooklyn and The Bronx shall be considered at the second regular meeting of each month.

(3) In the event the Board directs that one regular meeting be held during a specified month, the Board shall at such meeting consider applications for the release of property located in all boroughs.

(b) **Special Meetings.** (1) Special meetings may be called by the Chair.

(2) Notice of a special meeting shall be sent to each member by the Mayor's Office of Contracts, Public Hearings Unit no later than seven calendar days prior to such meeting. The notice shall be accompanied by copies of all agency reports for the matters to be considered at the special meeting.

(c) **Chair.** The Mayor shall preside at all meetings as Chair.

(d) **Quorum.** Except as provided in subdivision (a) of §l-05, a majority of the members of the Board entitled to vote on a matter before the Board shall constitute a quorum for action on such matter, provided that a quorum shall be deemed present only where such majority includes at least one of either the Speaker or the affected Borough President.

(e) **Votes.** (1) Except as provided in subdivision (a) of §1-05, any action respecting a matter before the Board shall require the affirmative vote of a majority of the members of the Board entitled to vote on such matter.

(2) The Hearing Secretary shall conduct a roll call upon every matter to be acted upon and all votes shall be taken by the ayes and nays. A roll call shall be conducted at the request of the Chair, unless the matter is laid over pursuant to subdivision (k) of §1-01.

(3) The vote of any member abstaining shall be considered a negative vote.

(4) The vote upon every matter acted upon shall be recorded by the Hearing Secretary.

(5) Except as otherwise provided by law, all matters before the Board shall be voted upon at meetings open to the public.

(f) **Attendance.** Members, or their delegates, shall remain in attendance during a meeting of the Board unless excused by the Chair. A request to be excused shall be formally made and entered upon the record.

(g) **Disqualification.** A member shall be excused from voting upon any matter upon the member's statement of the reasons for disqualification. The vote of any member so disqualified shall not be considered a negative or an affirmative vote.

(h) **Recesses.** At any regular meeting of the Board, recesses shall not aggregate more than one hour and any recess called shall specify a time for the return of the members of the Board for the resumption of the meeting's business. Recesses shall be called by the Chair.

(i) **Order of Business.** The order of business before the Board shall be as follows:

(1) Roll call.

(2) Matters laid over for consideration by the Board.

(3) New matters for consideration by the Board.

(j) **Calendar Calls.** There shall be no more than three calendar calls by the Hearing Secretary at each regular meeting. At the conclusion of the third call, all matters shall have been either acted upon, laid over or withdrawn in accordance with these Rules.

(k) **Layovers.** (1) In the event a submitting agency recommends denial of an application for the release of property and the applicant fails to appear at the first meeting at which the resolution disapproving such application is calendared for consideration by the Board, the matter shall be automatically laid over to the next meeting at which applications for the release of property in that borough are to be considered. There shall be no further layovers by reason of the applicant's failure to appear at a meeting.

(2) At the request of any member of the Board entitled to vote on an application for the release of property, such application shall be laid over from the first or second meeting at which the resolution approving or disapproving the application is calendared for consideration by the Board to the next meeting at which applications for the release of property in that borough are to be considered. No layover may be made with respect to an application pursuant to this subdivision more than one time.

(3) Any layovers in addition to those provided for in paragraphs 1 or 2 of this section may be made only upon the affirmative vote of a majority of the members entitled to vote on the matter. No matter may be laid over more than three times.

(l) **Withdrawals.** A matter may be withdrawn from consideration by the Board at the request of the submitting agency. Any such request shall be passed upon by the Chair, who shall specify a date by which the matter shall be resubmitted for the Board's con- sideration.

(m) **Additions to the Calendar.** A matter not appearing on the Calendar for a meeting of the Board may be added to the Calendar for consideration at such meeting only upon the unanimous vote of the members entitled to vote upon such matter.

(n) **Miscellaneous.** (1) Members of the Board or their delegates and City employees designated by the Board shall be the only persons permitted within the guard rail of the dais during meetings of the Board.

(2) Members of the Board shall be addressed in the third person and by title only.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

70 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-02 Public Testimony at Regular Meetings.

(a) **Order of Testimony.** Speakers opposed to a resolution shall be heard first and then speakers in favor thereof, unless otherwise ordered by the Chair. Applicants and other members of the public may testify on their own behalf or may be represented by counsel.

(b) **Time Available.** The time available to each member of the public for speaking at a meeting of the Board shall be limited to three minutes. A speaker may be heard only once on a particular resolution.

(c) **Hearing Slips.** A member of the public who wishes to speak at a meeting of the Board shall first complete a hearing testimony slip indicating his or her name and address, the address of the property with respect to which he or she wishes to testify, and his or her affiliation, if any. Slips shall be available from the Clerk sitting by the speaker's microphone. A speaker shall state his or her name and affiliation, if any.

(d) **Written Statements.** A member of the public may submit a written statement in lieu of or in addition to oral testimony. An original and twelve copies of any such statement shall be submitted. All copies must bear the Calendar number for the matter and indicate the meeting date. Copies submitted prior to the meeting date shall be delivered to the Mayor's Office of Contracts, Public Hearing Unit, 51 Chambers St., Room 1202, Borough of Manhattan. Copies submitted upon the meeting date shall be delivered to the Hearing Secretary at City Hall no later than one-half hour prior to the meeting.

(e) **Agency Testimony.** Representatives of the submitting agency shall be available to testify with regard to a resolution at the time it is being considered by the Board.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

3 of 5 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-03 Calendars.

(a) **Preparation of Calendar.** The Mayor's Office of Contracts, Public Hearings Unit shall prepare and cause to be printed a Calendar including a description of all matters to be presented and considered at each meeting of the Board. The resolutions shall be arranged in the order prescribed in subdivision (i) of §1-01 of these Rules. The Mayor's Office of Contracts, Public Hearings Unit shall also keep a record of matters which have been laid over.

(b) **Calendar Closing Date.** The Mayor's Office of Contracts, Public Hearings Unit shall close the Calendar at 12 o'clock noon fifteen calendar days prior to a regular meeting of the Board.

(c) **Distribution of Calendar.** The Mayor's Office of Contracts, Public Hearings Unit, shall make Calendar page proofs of the Calendar for a regular meeting of the Board available to Board members seven calendar days prior to the meeting. Copies of the calendar for a regular meeting shall be available to the Board members and to members of public three calendar days prior to the meeting.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-04 General Rules.

(a) **Submission of Agency Reports.** All agency reports intended for the Board's consideration at a regular meeting shall be addressed to the Board and delivered by the submitting agencies to the Mayor's Office of Contracts, Public Hearings Unit at least fifteen days before the meeting at which the matters to which they relate are to be considered. Such reports shall consist of an original accompanied by twelve copies thereof.

(b) **Availability of Agency Reports to Members.** The Mayor's Office of Contracts, Public Hearings Unit shall make copies of all agency reports intended for the Board's consideration at a regular meeting available to the members upon receipt of such copies from the submitting agencies pursuant to subdivision (a) of this section.

(c) **Transmittal of Resolutions.** The Mayor's Office of Contracts, Public Hearings Unit shall transmit to the submitting agencies certified copies of all resolutions adopted by the Board affecting such agencies.

(d) **Designation of Member Delegates.** Each Board member may, by written authority filed with the Hearing Secretary, designate any two officers or employees of such member to act as the delegates of such member at meetings of the Board. Either such officer or employee, so designated, may act in the place of the member at meetings of the Board, whenever such member is absent from such meetings. In the event that an officer or employee, so designated, is absent from a meeting of the Board, a Board member may, by written authority filed with the Hearing Secretary, designate another officer or employee of such member to act as the substitute delegate of such member at such meeting. A substitute delegate, so designated, shall not be replaced during the course of such meeting by the absent delegate.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

5 of 5 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

70 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 70 In Rem Foreclosure Release Board

CHAPTER 1 RULES OF PROCEDURE*1

§1-05 Amendment of Rules.

(a) **Vote Required.** The provisions of these Rules may be amended by a four-fifths vote of the members of the Board. The borough presidents shall designate one borough president to serve as a member of the Board for the purpose of voting upon any such amendment. For purposes of this section, a quorum shall consist of four members of the Board.

HISTORICAL NOTE

Section added City Record Sept. 16, 1991 eff. Oct. 16, 1991.

FOOTNOTES

1

[Footnote 1]: * Note: The Rules of Procedure were employed by the New York City In Rem Foreclosure Release Board on September 16, 1991. While adoption of the Rules is not controlled by the City Administrative Procedure Act, they are set forth herein for the purpose of convenient public access to such materials and in order to increase public familiarity and awareness of such rules.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-01 Scope of Rules.

These rules establish content and format requirements for agencies to follow in preparing annual voter assistance plans specifying the resources, opportunities and locations the agency will provide for voter assistance.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-02 Definitions.

Agency. "Agency" means a mayoral agency that has regular contact with the public in the daily administration of its business and shall include the Department of Aging, Department of Business Services, Department of Consumer Affairs, the Department of Correction, the Department of Employment, Department of Finance, the Department of Health, the Department of Homeless Services, the Department of Housing Preservation and Development, Department of Mental Health, the Department of Parks and Recreation, the Department of Personnel, the Police Department, the Department of Probation, the Human Resources Administration, the Department of Transportation, Department of Youth Services, and such other agencies as may be designated by the Coordinator of Voter Assistance after consultation with the agency.

Board of Elections. "Board of Elections" means the Board of Elections of the City of New York.

Charter. "Charter" means the New York City Charter.

Party. "Party" means any political organization meeting the definition of a "party" under §1-104 of the election law.

Plan. "Plan" means a voter assistance plan to be prepared annually by agencies specifying the resources, opportunities, and locations the agency will provide for voter assistance activities.

Registration form. "Registration form" means the application form to register to vote designed by the State Board of Elections pursuant to Election Law 5-210(5).

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

3 of 16 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-03 Submission of Plan.

Pursuant to §1056 of the Charter, on or before January 15, 1994 and on or before January 15th of each succeeding year, each agency shall submit a plan to the Mayor and the Coordinator of Voter Assistance in accordance with these rules.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-04 Registration Opportunities.

(a) Each plan shall specify the efforts the agency will make to provide opportunities to the public to register to vote.

(b) Each agency shall include in its plan:

(1) an amendment to the intake, application or other form it requires individuals to complete before receiving services at the earliest possible or next regularly scheduled printing of their forms, containing the following:

(i) the question,"IF YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY? YES __ NO __ " in prominent type;

(ii) the statement, "Applying, or declining to apply, to register to vote will not affect the amount of assistance that you will be provided by this agency".

(iii) the statement, "if you would like help in filling out the voter registration application form we will help you".

(2) Until such time as each agency amends its forms as set forth in paragraph (1) of this subdivision, each of the employees in such agency who deal directly with members of the public applying for services shall routinely ask the question and make the statements set forth in paragraph (1) to all such applicants.

(c) In cooperation with the Coordinator of Voter Assistance, each agency shall develop promotional materials in English, Spanish, and Chinese informing the public of the existence of voter registration materials and shall specify in

its plan the locations open to the public at which such materials shall be prominently displayed.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

5 of 16 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-05 Employees.

(a) Each agency, after consultation with the Department of Personnel, shall specify in its plan, that each of the agencies employees or other persons who have contact with the public will be assigned to voter assistance activities it undertakes and the job titles of such employees. Wherever possible, the employee who provides assistance should be the same person who gives assistance in the application process and in the regular services that the agency provides. Each employee assigned to voter registration activities shall provide to each applicant who registers to vote the same degree of assistance as with regard to the completion of its own forms.

(b) Each agency shall name in its plan a coordinator of voter assistance activities in that agency and a site coordinator for each agency office conducting voter assistance activities who shall be trained by the staff of the Voter Assistance Commission and who shall be responsible for the implementation and reporting of the agency's plan. The agency coordinator shall train all employees and other persons assigned by the agency to work on voter assistance activities how to fill out voter registration forms, or arrange for its employees to receive such training from the VAC or its designate, and shall provide such employees and other persons with instructional materials on voter registration to be supplied to each agency by the Voter Assistance Commission. Each agency shall provide ongoing training for the agency voter assistance program.

(c) Employees and other persons working on voter assistance activities for an agency shall not:

(1) directly or indirectly seek to influence an applicants political preference or party enrollment;

(2) make any statement to an applicant or take any action the purpose or effect of which is to discourage the

applicant from registering to vote; or

(3) make any such statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing in the availability of services or benefits.

(d) Employees and other persons working on voter assistance activities for an agency may not collect or mail registration forms filled out by members of the public but shall direct members of the public, to whom registration forms are distributed to the nearest mailbox.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 1 PREPARATION OF VOTER ASSISTANCE PLANS

§1-06 Reporting.

Each plan shall require the agency coordinator of voter assistance to record the number of employees and other persons working on the voter assistance activities performed by the agency, list all the voter registration sites and locations, and the total number of voter registration forms distributed to the public. The agency coordinator shall report no later than the second Monday of each month to the City Coordinator of Voter Assistance the number of employees and other persons assigned each day to each voter assistance activity during the previous month and the total number of voter registration forms distributed during the previous calendar month. Agencies shall collect data on the number of voter registration applications completed and any additional statistical evidence deemed necessary for program evaluation. No information relating to a declination to vote in connection with an application made at an agency may be used for any purpose other than registration.

HISTORICAL NOTE

Section added City Record Oct. 29, 1993 eff. Nov. 28, 1993.

7 of 16 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-01 Video Voter Guide Generally.

The Video Voter Guide is a nonpartisan program to provide New York City voters enhanced access to information about candidates seeking to represent them and local referendum proposals (including proposals of charter revision commissions, local laws subject to referendum and ballot initiatives) to be voted on in city elections. The service leverages the production and distribution capabilities of the City of New York's must-carry PEG channels to share this information via cable television and the internet. Participation in the Video Voter Guide program is voluntary. The program will allow candidates in municipal elections seeking one of the following five offices to record messages for cablecast on NYC TV: Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. The Coordinator of Voter Assistance ("Coordinator") shall administer this program for the benefit of voters citywide. The Coordinator also shall work with the NYC Media Group and NYC TV, a division of the New York City Department of Information Technology and Telecommunications, in implementing this program.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

Statement of Basis and Purpose The addition of Chapter 2 of Title 71 of the RCNY is to establish the Video Voter Guide program and the requirements for participation in the program, and to establish the methods of production and cablecasting of the Video Voter Guide.

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-02 Definitions.

As used in this chapter:

Candidate. "Candidate" means an individual who seeks nomination or election to the office of Mayor, Public Advocate, Comptroller, Borough President or City Council Member, to be voted for at a primary or general election.

Official Ballot. "Official Ballot" means an official ballot as defined in New York Election Law Article 1.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 2 added City Record July 8, 2005 eff. Aug. 7, 2005. Note further provisions of City Record July 8, 2005:

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-03 General Information.

In addition to any information that the Coordinator determines to be useful for promoting civic participation, public awareness of the voting process and the functions of each office and the Video Voter Guide itself, the Video Voter Guide for an election shall provide the following information: (1) the date of the election; (2) the hours during which the polls are open; and (3) maps outlining the geographical boundaries of each office. The Coordinator shall also take steps as he or she deems appropriate to publicize and disseminate the program.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-04 Candidate Eligibility and Participation.

(a) All candidates who have filed a valid designating or nominating petition with the Board of Elections, or who can otherwise demonstrate that they will lawfully appear on the official primary or general election ballot, shall be eligible to register to participate in the Video Voter Guide. Challenges to designating or nominating petitions shall not affect a candidate's opportunity to record a statement. However, statements made by candidates who are removed from the official ballot prior to program cablecast will not be aired.

(b) Participation in the Video Voter Guide is voluntary. There is no fee or charge for participating in the Video Voter Guide. To participate in the Video Voter Guide, eligible candidates shall:

(1) complete a certification form agreeing to comply with these rules and any other rules or procedures set forth in writing by the Coordinator;

(2) designate a Video Voter Guide liaison with whom the Coordinator shall communicate for the scheduling of recording appointments and any other purposes; and

(3) have one recording appointment of no more than thirty minutes at the location specified in §2-05(c), during which candidates shall record their messages for cablecast in accordance with these rules.

(c) The Coordinator shall have discretion to set times for recording candidate statements, provided that:

(1) recording begins at least one month prior to the primary election for candidates participating in the primary

election;

(2) recording begins at least one month prior to the general election for candidates participating only in the general election; and

(3) where unusual circumstances exist that make earlier recording impracticable, the Coordinator may in his or her discretion provide for recording to begin after the dates set forth in this subdivision.

(d) Candidates may register to participate in the Video Voter Guide at any time between the date of their submission of a designating or nominating petition to the Board of Elections, or the date that they qualify to lawfully appear on the official primary or general election ballot, and the date six weeks prior to the primary election for candidates participating in the primary election, or six weeks prior to the general election for candidates participating only in the general election. Where unusual circumstances exist that make earlier registration impracticable for a significant number of candidates, the Coordinator may in his or her discretion extend the deadline for registration to a date later than that set forth in this subdivision. Scheduling of recording sessions shall be done on a rolling basis.

(e) If a candidate fails to register by the date specified in subdivision (d) of this section, he or she may attempt to register during the period designated for recording of candidate statements by completing the requirements in paragraphs (1) and (2) of subdivision (c) of this section, and by contacting the Coordinator or his or her designee to attempt to schedule an appointment for recording pursuant to §2-05 of this chapter. The Coordinator or designee shall make every reasonable effort to schedule an appointment for such late candidates, but is not required to do so; provided, however, that the Coordinator shall give priority to those candidates who are added to the ballot after the recording period has commenced.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-05 Scheduling Appointments for Recording.

(a) To schedule an appointment, a candidate's designated liaison must contact the Coordinator or his or her designee by telephone. Once an agreeable date is found, the candidate or his or her liaison shall send signed written confirmation of the agreed-upon appointment time and date to the Coordinator. This signed written confirmation may be faxed, hand-delivered or e-mailed as a .pdf attachment.

(1) An appointment time is only considered reserved once the Coordinator is in possession of a signed written confirmation. If the Coordinator does not receive a signed written confirmation within five days of the telephone call arranging the appointment, the appointment time shall be released and the candidate's liaison must contact the Coordinator or his or her designee by telephone to schedule an appointment.

(2) Reserved.

(b) If a candidate wishes to cancel an appointment, the candidate's designated liaison must e-mail or fax a request to the Coordinator at least twenty-four (24) hours prior to the scheduled appointment. The Coordinator or his or her designee shall call the liaison and make every reasonable effort to reschedule the appointment. The candidate shall have no more than one opportunity to reschedule his or her appointment and candidates who fail to appear at their scheduled time shall waive their participation in the program.

(c) Candidate statements shall be recorded at the NYC Media Group Studios located at 112 Tillary Street in Brooklyn, New York, or such other location as may be designated by the Coordinator.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-06 NYC Media Group and NYC TV.

NYC Media Group and NYC TV shall provide video production and cablecasting for the Video Voter Guide in accordance with these rules.

HISTORICAL NOTE

Section added City Record July 8, 2005 eff. Aug. 7, 2005. [See Chapter 2 footnote]

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-07 Recording Protocol.

(a) Each candidate shall have no more than thirty (30) minutes for taping his or her message. This time allotment includes set-up, rehearsal and taping time. Candidates should arrive no later than fifteen (15) minutes prior to their scheduled recording time. In the event of technical difficulties on the part of NYC TV, the Coordinator may, at his or her discretion, extend the thirty-minute time-limit to ensure fairness. Candidates are encouraged to rehearse prior to their appointments to ensure proper timing.

(b) Only candidates shall be recorded. Proxy speakers are not permitted to either speak or appear on camera.

(c) Each candidate shall be given no more than two opportunities to record a statement during that thirty minute session.

(1) Candidates shall be recorded while appearing in front of and speaking directly to a studio camera.

(2) Candidates may not hold anything in their hands except written notes; nor may they display any literature, graphs or props.

(3) If a candidate wishes to use a teleprompter, the candidate must arrive at least thirty (30) minutes prior to his or her scheduled taping with an electronic file of his or her statement for uploading into the teleprompter. Candidates will be encouraged but not obliged to e-mail their statements to the Coordinator at least twenty-four (24) hours prior to their scheduled recording. The Coordinator shall inform candidates in advance of the required electronic format for such file at the time of scheduling of the appointment for recording. If the file cannot be uploaded promptly, or if a candidate

does not arrive in sufficient time for uploading to occur, the teleprompter shall not be available for use.

(4) Statements shall be made continuously and unedited. Neither NYC TV nor a candidate shall edit a recorded statement in any way, except by adding lower-third information and adjusting the audio and video levels for on-air delivery. Candidates who exceed their allotted statement time, as set forth in §2-08 of this chapter, will be cut off at the time limit, and their statements will be aired as incomplete followed by a written statement on-screen, stating "Candidate Time Expired."

(d) Candidates will be shown a printed copy of their lower-third information as it will appear on the screen that will identify, in English, each candidate by name and party affiliation. In primary election races, lower-third information for candidates will also include the words "Primary Candidate" following the candidate's listed party affiliation. The candidate shall supply this information upon registering in the Video Voter Guide Program. This document, referred to as the Graphic Affidavit ("GA"), must be signed by the candidate or his or her liaison to certify that the graphic information has been proofread and accepted by the candidate as correct and valid. No adjustments can be made to this information once the GA is signed. NYC Media Group will also create an over-the-shoulder graphic to be displayed during candidate statements, showing the office sought and a map depicting its geographic boundaries. For City Council candidates, the number of the district which the candidate seeks to represent will also be shown.

(e) If a candidate makes two recordings of his or her statement, the candidate or his or her liaison shall, immediately following completion of the recording session, review the two recordings and select one for cablecast on NYC TV.

(f) Candidates are prohibited from viewing the statements of opposing candidates prior to the cablecast.

(g) Candidates will be allowed to sit on a stool/chair or stand while recording their statements. Special accommodations for candidates with special needs will be made at the sole discretion of the Coordinator or his or her designee.

(h) No special consideration shall be given to any incumbent candidate. No official insignia, pins or on-screen messages of any kind will be permitted.

(i) Candidate interaction with NYC Media Group and NYC TV is limited to recording and production in the presence of the Coordinator or a monitor designated by the Coordinator.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-08 Candidate Statements.

(a) The length of candidate statements is as follows:

(1) candidates for citywide office (Mayor, Comptroller, Public Advocate) may make a statement of no more than four (4) minutes in duration;

(2) candidates for Borough President may make a statement of no more than three (3) minutes in duration; and

(3) candidates for City Council Member may make a statement of no more than two (2) minutes in duration.

(b) No exceptions shall be made to the candidate statement time limitations listed in subdivision (a) of this section.

(c) Candidates participating in the voluntary Video Voter Guide program may record any message, provided that they shall not:

(1) refer to any other candidate by name or description;

(2) use any visual aids (i.e. campaign buttons, posters, charts, graphs);

(3) wear clothing or insignias indicating that a candidate holds a public office;

(4) make statements that are profane, obscene, libelous, slanderous, or defamatory;

(5) engage in any commercial programming or advertising;

(6) display any obscene material or pornography;

(7) utilize inappropriate or obscene hand gestures or body movements or engage in nudity;

(8) engage in the unauthorized use of copyrighted material or invasion of privacy; or

(9) violate any city, state or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(d) Candidates who violate any of the provisions of subdivision (c) of this section shall not have their statements aired.

(e) Candidates may dress as they choose subject to the provisions of subdivision (c) of this section, and shall be responsible for their own clothing, make-up and hairdressing.

(f) Candidates may record statements in the language of their choice, provided, however, that candidates who record a statement in a language other than English, Spanish, Chinese or Korean shall provide any reasonably requested assistance to the Coordinator or his or her designee in translating the statement into English.

(g) The Coordinator shall arrange for the transcription of candidate statements, and translation of those statements into any applicable languages pursuant to the Voting Rights Act. Such transcripts and applicable translations of recorded statements shall be made available to the public beginning on the date of the first cablecast of the program, both on the web and in response to telephonic or written requests.

(h) Candidates who appear on the ballot for both the primary and general elections of a single election cycle shall only record a single statement to be aired in the Video Voter Guides for both the primary and general elections.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-09 Cablecast Guidelines.

(a) NYC Media Group shall cablecast statements on NYC TV Channel 74. Content shall be simulcast via streaming media on a website designated by the Coordinator, and shall be accessible thereafter.

(1) Beginning at 8 P.M. on each weekday evening of the weeks immediately preceding both the primary and the general elections, NYC Media Group shall cablecast statements from all candidates for city elective office.

(2) At 9 A.M. on each day of the week immediately preceding both the primary and the general elections, beginning on the day following the first evening cablecast, the previous evening's cablecast shall be re-cablecast.

(i) The order of candidate statements cablecast each day of the week immediately preceding the elections shall rotate each evening so that each borough shall have one evening and one morning in which the statements of candidates for office in that borough are cablecast first. The order for borough cablecast shall be designated by a random lottery to be conducted by the Coordinator.

(ii) The order of candidate statements within each borough cablecast for both the primary and the general elections shall be as follows:

(A) candidates for City Council Member shall appear in alphabetical order within the City Council district they seek to represent, and City Council districts shall appear in numerical order by district;

(B) candidates for Borough President shall appear alphabetically.

(iii) Any City Council district falling geographically within more than one borough shall appear in the cablecast for each borough in which the district is located.

(iv) Statements from candidates for citywide office shall appear between the statements from each borough's candidates for Borough President and the statements from the subsequent borough's candidates for City Council Member.

(A) In both the primary and general election cablecasts, candidates for citywide office shall appear alphabetically by office in the following order:

(i) Mayor;

(ii) Public Advocate; and

(iii) Comptroller.

(B) Reserved.

(3) Following the 9 A.M. repeat cablecast of the final borough, NYC Media Group shall cablecast statements from all candidates for city elective office on a continuous loop through election day. Consistent with cablecast during the daytime hours of the weekdays in the week prior to the election, candidates will be cablecast by borough, in the order in which the boroughs appeared during the week.

(b) In general elections where local referendum proposals will appear on the ballot:

(1) The text of each local proposal that on the date of the cablecast has been certified to appear on the ballot shall be displayed on-screen in English for a period of at least one (1) minute.

(2) The proposals shall be displayed in the order they appear on the ballot following the statements from candidates for citywide office.

(3) Following the display of the final proposal, a statement shall appear on-screen in English and in each of the applicable Voting Rights Act languages to the effect that information on the referendum proposals, including summaries, appears in the printed Voter Guide, and contains information on how to obtain copies of the printed Voter Guide.

HISTORICAL NOTE

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16 of 16 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

71 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 71 Voter Assistance Commission

CHAPTER 2 VIDEO VOTER GUIDE*1

§2-10 Conflict Resolution and Finality of Coordinator of Voter Assistance Decisions.

(a) Any conflicts related to the recording and/or cablecasting of candidate statements will be decided by the Coordinator or a monitor designated by the Coordinator.

(b) All decisions with respect to the Video Voter Guide, including resolution of conflicts, made by the Coordinator or his or her designee are final.

HISTORICAL NOTE

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